

December 06, 2022

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Civil Action No. 19-cv-150-DMT-ARS

RULE 30(b)(6) VIDEOTAPED DEPOSITION OF:
JASON N. O'NEAL - DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS
December 6, 2022
Via RemoteDepo™

STATE OF NORTH DAKOTA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

PURSUANT TO NOTICE AND AGREEMENT, the
Rule 30(b)(6) videotaped deposition of JASON N.
O'NEAL, DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN
AFFAIRS, was taken on behalf of the Plaintiff in
Washington, D.C., by remote means on December 6, 2022,
at 8:59 a.m. Mountain Standard Time, before Tracy C.
Masuga, Registered Professional Reporter and Certified
Realtime Reporter, appearing remotely from Denver
County, Colorado.

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<p>1 REMOTE APPEARANCES</p> <p>2 For the Plaintiff:</p> <p>3 PAUL B. KERLIN, ESQ. Greenberg Traurig LLP 1000 Louisiana Street Suite 6700 Houston, Texas 77002 kerlinp@gtlaw.com</p> <p>6 PAUL M. SEBY, ESQ. Greenberg Traurig LLP 1144 15th Street Suite 3300 Denver, Colorado 80202 sebyp@gtlaw.com</p> <p>10 For the Defendant:</p> <p>11 TIMOTHY B. JAFEK, ESQ. JANE E. BOBET, ESQ. VICTOR WILLIAM SCARPATO III, ESQ. Department of Justice U.S. Attorney's Office District of Colorado 1800 California Street Suite 1600 Denver, Colorado 80202 timothy.jafek@usdoj.gov jane.bobet@usdoj.gov victor.scarpato@usdoj.gov</p> <p>18 ANTHONY C. IRISH, ESQ. U.S. Department of the Interior Office of the Solicitor Washington, D.C. tony.irish@sol.doi.gov</p> <p>22 Also Present:</p> <p>23 Michael Banks, Videographer Jose Diaz</p>	<p>1 Exhibit 839 Email to Gibson and Cruzan from O'Neal, 3/21/17, Subject: Fwd: Diamond Pipeline Protest Camp; with attached emails; with attachments; DOI_00011686 - DOI_00011700 78</p> <p>4 Exhibit 840 Email to Mathis from O'Neal, 1/26/17, Subject: Re: Update; with attached email; DOI_00026858 - DOI_00026859 82</p> <p>7 Exhibit 841 Email to Cruzan from O'Neal, 2/3/17, Subject: Re: News Release: Statement of Acting Assistant Secretary Michael S. Black on the Standing Rock Sioux Tribe and BIA Law Enforcement Assistance; with attached emails; with attachment; DOI_00019810 - DOI_00019812 84</p> <p>12 Exhibit 842 Email to Good from O'Neal, 2/3/17, Subject: Re: FBI BIA memo on response to civil disorder; with attached email; with attachment; DOI_00010611 - DOI_0001623 88</p> <p>15 Exhibit 843 Email to O'Neal, et al., from Cossey, 2/16/17, Subject: webEOC feed 2; with attached emails; with attachment; DOI_00011094 - DOI_00011099 90</p> <p>18 Exhibit 844 Email to O'Neal from Keener, 10/3/16, Subject: Re: ESF-13: Preemptive preparations for Hurricane Matthew; with attached emails; DOI_00009144 - DOI_00009146 92</p> <p>21 Exhibit 845 Email to Cruzan from O'Neal, 12/22/16, Subject: Re: OJS meeting with the Secretary; with attached emails; DOI_00013061 - DOI_00013065 95</p>
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<p>1 I N D E X</p> <p>2 EXAMINATION OF JASON N. O'NEAL: PAGE</p> <p>3 December 6, 2022</p> <p>4 By Mr. Kerlin 9</p> <p>5 By Mr. Jafek 109</p> <p>6 DEPOSITION EXHIBITS: INITIAL REFERENCE</p> <p>7 (Exhibits provided electronically to the reporter.)</p> <p>8 Exhibit 833 Email to Cruzan from O'Neal, 2/14/17, Subject: Re: OPS Plan; with attached emails; with attachments; DOI_00033754 - DOI_00033777 21</p> <p>11 Exhibit 834 Email to Smart and Lawrence from O'Neal, 9/28/16, Subject: Re: 9-28-2016; with attached emails; DOI_00009107 - DOI_00009108 40</p> <p>13 Exhibit 835 Email to O'Neal, McClure, and Cossey from Smith, 10/18/16, Subject: Tuesday Nightly Brief; with attachment; DOI_00009745 - DOI_00009754 43</p> <p>16 Exhibit 836 Email to Hudson, Armstrong, and Smart from O'Neal, 9/27/16, Subject: Fwd: Tribal Court Jurisdiction over North Camp (Redacted); with attached emails; DOI_00027254 - DOI_00027257 47</p> <p>19 Exhibit 837 Email to Salamanca from O'Neal, 9/23/16, Subject: Re: North Camp Request for Dialogue; with attached emails; DOI_00011791 - DOI_00011793 74</p> <p>22 Exhibit 838 Email to O'Neal from Cossey, 2/16/17, Subject: Meeting Live Feed; with attached emails; DOI_00011084 - DOI_00011088 76</p>	<p>1 Exhibit 846 Email to Wendland from O'Neal, 2/3/17, Subject: Re: BIA to provide more officers to assist Standing Rock Sioux tribe in closing protest camps on tribe's land; with attached email; DOI_00019770 99</p> <p>5 Exhibit 847 Email to Cruzan from O'Neal, 3/14/17, Subject: Re: Please respond by Mar 31 - DAPL Unlawful Protest Response After Action Review - https://www.surveymonkey.com/r/DAPLProtestAAR; with attached emails; DOI_00011645 - DOI_00011651 100</p> <p>11 DEPOSITION EXHIBITS: (Previously marked)</p> <p>12 Exhibit 494 Email to SRJ2@ios.doi.gov from U.S. Department of the Interior; 9/9/16, Subject: Joint Statement from the Department of Justice, the Department of the Army, and the Department of the Interior regarding Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers; DOI_00000001 to DOI_00000002 53</p> <p>17 Exhibit 739 Email to O'Neal from Cruzan, 8/14/16, Subject: Re: Standing Rock Sioux Tribe REF: DAPL protest - Council arrests by Morton County Sheriff's Department; with attached emails; DOI_00007736 - DOI_00007738 31</p> <p>21 Exhibit 740 Email to Cruzan from O'Neal, 8/14/16, Subject: Re: Standing Rock Sioux Tribe REF: DAPL protest - Council arrests by Morton County Sheriff's Department; with attached emails; DOI_00007347 - DOI_00007351 38</p>

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<p>1 Exhibit 803 Second Amended Notice of 30(b)(6) Deposition of The United States of America, 11/23/22; with attachments</p> <p>2</p> <p>3</p> <p>4 Exhibit 821 Joint Statement from Department of Justice, Department of the Army, and the Department of the Interior regarding D.C. Circuit Court of Appeals Decision in Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, 10/10/16; USACE_00015886</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 6</p> <p>12</p> <p>64</p> <p>Page 8</p> <p>1 Masuga on behalf of U.S. Legal Support, please enter the statement for remote proceedings into the record.</p> <p>2</p> <p>3 THE REPORTER: The attorneys</p> <p>4 participating in this deposition acknowledge that I am</p> <p>5 not physically present in the room and that I will be</p> <p>6 reporting this proceeding remotely.</p> <p>7 They further acknowledge that in lieu of</p> <p>8 an oath administered in person, the witness will</p> <p>9 verbally declare his testimony in this matter is under</p> <p>10 penalty of perjury.</p> <p>11 Counsel, please indicate your agreement</p> <p>12 by stating your name and your agreement on the record.</p> <p>13 MR. KERLIN: This is Paul Kerlin on</p> <p>14 behalf of the plaintiff, the State of North Dakota,</p> <p>15 and we agree.</p> <p>16 MR. JAFEK: This is Tim Jafek on behalf</p> <p>17 of the United States, and we agree.</p> <p>18 THE REPORTER: Mr. O'Neal, do you</p> <p>19 solemnly state that the testimony you are about to</p> <p>20 give in the cause now pending will be the truth, the</p> <p>21 whole truth, and nothing but the truth?</p> <p>22 THE DEPONENT: Yes.</p> <p>23 JASON N. O'NEAL,</p> <p>24 having been first duly sworn to state the whole truth,</p> <p>25 testified as follows:</p>
<p>Page 7</p> <p>1 WHEREUPON, the following proceedings</p> <p>2 were taken pursuant to the Federal Rules of Civil</p> <p>3 Procedure.</p> <p>4 * * * *</p> <p>5 (Deposition Exhibits 833 through 847</p> <p>6 were introduced by Mr. Kerlin and electronically</p> <p>7 provided to the court reporter for marking.)</p> <p>8 THE VIDEOGRAPHER: We are now on the</p> <p>9 record. Participants should be aware that this</p> <p>10 proceeding is being recorded and, as such, all</p> <p>11 conversations held will be recorded unless there is a</p> <p>12 request and agreement to go off the record.</p> <p>13 Private conversations and/or</p> <p>14 attorney-client interactions should be held outside</p> <p>15 the presence of the remote interface.</p> <p>16 This is the remote video-recorded</p> <p>17 deposition of Jason O'Neal. Today is Tuesday,</p> <p>18 December 6, 2022. The time is now 3:59 p.m. UTC,</p> <p>19 8:59 a.m. Mountain. We're here in the matter of State</p> <p>20 of North Dakota v. United States of America.</p> <p>21 My name is Michael Banks. I'm a video</p> <p>22 technician on behalf of U.S. Legal Support. I'm not</p> <p>23 related to any party in this action, nor am I</p> <p>24 financially interested in the outcome.</p> <p>25 At this time will the reporter, Tracy</p>	<p>Page 9</p> <p>1 EXAMINATION</p> <p>2 BY MR. KERLIN:</p> <p>3 Q. Good morning, Mr. O'Neal. My name is</p> <p>4 Paul Kerlin, and I'm an attorney with the law firm</p> <p>5 Greenberg Traurig, as well as a Special Assistant</p> <p>6 Attorney General for North Dakota, and I represent</p> <p>7 North -- the State of North Dakota in this action,</p> <p>8 along with my colleague, Paul Seby. Do you understand</p> <p>9 that?</p> <p>10 A. Yes. Good morning, Paul.</p> <p>11 Q. Good morning. Would you state your</p> <p>12 name.</p> <p>13 A. My name is Jason O'Neal.</p> <p>14 Q. And today I'll refer to my client as</p> <p>15 "North Dakota" or "the State of North Dakota," okay?</p> <p>16 A. Okay.</p> <p>17 Q. You understand that you've been sworn in</p> <p>18 and you're under oath, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you understand that some or all of</p> <p>21 the testimony you give today may be played in front of</p> <p>22 the judge at the trial of this matter?</p> <p>23 A. Yes.</p> <p>24 Q. And -- and you're doing a good job.</p> <p>25 We're taking this deposition by agreement of the</p>

Objection
to all
testimony
as hearsay,
802

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10 to 13

<p style="text-align: right;">Page 10</p> <p>1 parties remotely, so by Zoom. If at any point you</p> <p>2 have difficulty hearing, sometimes there could be some</p> <p>3 audio issues, might be bandwidth limitations, just</p> <p>4 let -- speak up, let us know, and we will do the best</p> <p>5 we can to address any technical issues that arise.</p> <p>6 A. Yes.</p> <p>7 Q. Also, we'll be using some documents, I</p> <p>8 think, throughout this deposition as exhibits, and we</p> <p>9 will endeavor to share our screen so that you can see</p> <p>10 it. If it's too small, too large, you want us to</p> <p>11 scroll up or down, just simply provide some verbal</p> <p>12 instruction, and -- and we'll move it around to make</p> <p>13 sure that you'll have a complete and full opportunity</p> <p>14 to review the exhibit before or during the questions</p> <p>15 that we ask about it, okay?</p> <p>16 A. Okay. Thank you.</p> <p>17 Q. And you're doing a great job of letting</p> <p>18 me finish my questions. That's one of the other</p> <p>19 things, both -- I mean, more often in person than</p> <p>20 remotely, but frequently in the course of the</p> <p>21 deposition the person being deposed will anticipate</p> <p>22 where the questioner is going and might start their</p> <p>23 answer before the question is finished. It's</p> <p>24 difficult and challenging for the court reporter to</p> <p>25 take down a clean record, as we say, so that, you</p>	<p style="text-align: right;">Page 12</p> <p>1 question pending, that we might want to get an answer</p> <p>2 to that question before we then take the break, okay?</p> <p>3 A. Thank you, Paul.</p> <p>4 Q. Any questions about the proceedings so</p> <p>5 far?</p> <p>6 A. No, sir.</p> <p>7 Q. Okay. Do you understand that today you</p> <p>8 are being -- you've been tendered as a -- as a witness</p> <p>9 on behalf of the Department of the Interior in this</p> <p>10 case on certain topics?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And I'm going to show you what's</p> <p>13 been marked as Exhibit 803, as I recall. And we can</p> <p>14 zoom in on this, and I think you're on the next page,</p> <p>15 but before we do, if you would just take a look at</p> <p>16 this. Do you recognize this document?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Have you seen this before, then?</p> <p>19 A. I have.</p> <p>20 Q. Okay. And if we turn to page 2, your</p> <p>21 name appears as the designee for topics 6, 9, 10, 13</p> <p>22 through 16, 20, and 21 as they relate to the</p> <p>23 Department of the Interior or the Bureau of Indian</p> <p>24 Affairs. Do you see that?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 11</p> <p>1 know, it gets the full question and the full answer if</p> <p>2 we talk over each other.</p> <p>3 I will do my best not to. And if you</p> <p>4 could just wait until my question is completed, if</p> <p>5 there's an objection by your counsel, if there's an</p> <p>6 objection lodged, and then provide your answer so that</p> <p>7 we're not talking over each other as best as possible,</p> <p>8 okay?</p> <p>9 A. Understood.</p> <p>10 Q. Great. And the last thing I would</p> <p>11 mention is verbal answers. Sometimes we nod our head.</p> <p>12 So I might prompt you for a verbal answer, if that's</p> <p>13 the case, but it's simply so the court reporter can</p> <p>14 get that answer down on the record rather than a head</p> <p>15 nod or a head shake, okay?</p> <p>16 A. Yes.</p> <p>17 Q. If you need a break, let me know. I</p> <p>18 understand you have other obligations besides this,</p> <p>19 and I appreciate your time today, and we'll respect</p> <p>20 that. If you have something that comes up, either for</p> <p>21 work or for some other reason you need a break, just</p> <p>22 let me know. We'll typically take a break around --</p> <p>23 probably the top of the hour. If -- if you need one</p> <p>24 sooner than that, let me know.</p> <p>25 I would ask, you know, if we have a</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. And have you prepared to testify on</p> <p>2 those topics?</p> <p>3 A. I have.</p> <p>4 Q. Can you give me an idea of the total</p> <p>5 amount of time you spent preparing for your deposition</p> <p>6 today.</p> <p>7 A. Yes, sir. I had met with attorneys from</p> <p>8 both the Department of Interior and the Department of</p> <p>9 Justice on three different occasions for approximately</p> <p>10 two hours each, reviewing materials; and as well spent</p> <p>11 about 12 hours reviewing documentation that was shared</p> <p>12 with me. That would include a large electronic binder</p> <p>13 of documents and a chronology of the incidents and</p> <p>14 events, depositions from Darren Cruzan and Sally</p> <p>15 Jewell, as well as a number of emails and other</p> <p>16 documents. That's all I can remember at the time. I</p> <p>17 know there was quite a few documents and quite a bit</p> <p>18 of time spent reviewing.</p> <p>19 Q. Okay. Other than counsel that you</p> <p>20 mentioned, did you speak with anyone in preparation</p> <p>21 for your deposition?</p> <p>22 A. I did not.</p> <p>23 Q. Okay. So you didn't speak with either</p> <p>24 Mr. Cruzan or Sally Jewell?</p> <p>25 A. I did not.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Q. Okay. And so your testimony on these</p> <p>2 topics will be based upon what you prepared. So you</p> <p>3 said there was an electronic binder that you reviewed,</p> <p>4 materials, for about 12 hours, including some</p> <p>5 depositions and some other documents, and you</p> <p>6 specifically mentioned Darren Cruzan and Sally</p> <p>7 Jewell's depositions. And then you mentioned that on</p> <p>8 three different occasions you met for two hours with</p> <p>9 the Department of the Interior and Department of</p> <p>10 Justice attorneys. Do I have that correct?</p> <p>11 A. Yes, that is correct.</p> <p>12 MR. KERLIN: Okay. And -- and,</p> <p>13 Mr. Jafek, I'll ask you this, in the interest of time,</p> <p>14 but are the electronic documents that were shared with</p> <p>15 Mr. O'Neal in preparation for his deposition the</p> <p>16 documents that have been provided to us that have been</p> <p>17 shared with other witnesses in this case?</p> <p>18 MR. JAFEK: There are some that have</p> <p>19 been not.</p> <p>20 MR. KERLIN: Okay.</p> <p>21 Q. (BY MR. KERLIN) Okay. And -- and I</p> <p>22 guess in addition, Mr. O'Neal, you also have some</p> <p>23 personal experience with some of the subject matter</p> <p>24 that we're talking about, the DAPL protest and the</p> <p>25 response to it, right?</p>	<p style="text-align: right;">Page 16</p> <p>1 titles within BIA, deputy assistant director, special</p> <p>2 agent in charge, as well as assistant director.</p> <p>3 Q. During the time period of the -- of the</p> <p>4 Dakota Access Pipeline protests, so from approximately</p> <p>5 August of 2016 through March of 2017, what was your</p> <p>6 role at BIA?</p> <p>7 A. I was the deputy associate director for</p> <p>8 field operations.</p> <p>9 Q. And who did you report to at that time?</p> <p>10 A. My first-line supervisor at that time</p> <p>11 would have been David Little.</p> <p>12 Q. And during the course of the DAPL</p> <p>13 protest, what was your role with respect to the -- the</p> <p>14 protest or the protest response?</p> <p>15 A. I had several roles. Early on, in the</p> <p>16 beginning, it was initially information sharing,</p> <p>17 making sure that email communication that was coming</p> <p>18 up to me was making its way up our chain of command.</p> <p>19 At one point, our director decided to</p> <p>20 respond out directly and spend time at the event, and</p> <p>21 so as the event progressed, I did physically go up to</p> <p>22 the area and take his place for a couple weeks when he</p> <p>23 would be in break.</p> <p>24 But primarily my role was ensuring the</p> <p>25 information was being shared, and monitoring the --</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Yes, sir, that is correct.</p> <p>2 Q. Okay. Who are you currently employed</p> <p>3 by?</p> <p>4 A. The U.S. Department of Interior, Bureau</p> <p>5 of Land Management.</p> <p>6 Q. And what's your title?</p> <p>7 A. I am the director for the Office of Law</p> <p>8 Enforcement and Security.</p> <p>9 Q. And how long have you had that position?</p> <p>10 A. Since April of this year.</p> <p>11 Q. Okay. Prior to that position, what</p> <p>12 position did you hold and with which department?</p> <p>13 A. Prior to coming to the Bureau of Land</p> <p>14 Management, I was the director for the Bureau of</p> <p>15 Indian Affairs Office of Justice Services.</p> <p>16 Q. And how long were you in that role?</p> <p>17 A. I was in that role for approximately</p> <p>18 14 months.</p> <p>19 Q. If my -- generally my calendaring is</p> <p>20 correct, then I think that takes us back to about</p> <p>21 February of 2021. Would that be about right?</p> <p>22 A. (Deponent nodded head.)</p> <p>23 Q. Okay. What was your prior -- prior role</p> <p>24 or title?</p> <p>25 A. From 2012 until 2021, I held a number of</p>	<p style="text-align: right;">Page 17</p> <p>1 the situation and our resources nationwide.</p> <p>2 Q. And when you say "information sharing,"</p> <p>3 is that sharing exclusively within the federal</p> <p>4 government, so within the Department of the Interior</p> <p>5 or with other federal agencies or departments?</p> <p>6 A. So there was two primary roles that I</p> <p>7 had: One was establishing a program analyst that</p> <p>8 would be physically located with the State and Federal</p> <p>9 partners to make sure that we were sharing</p> <p>10 information. And so I was the one that established</p> <p>11 and ensured continued coordination of having a program</p> <p>12 analyst there with the State.</p> <p>13 And then the executive summary that was</p> <p>14 developed and ultimately ran the course of the event,</p> <p>15 I was responsible for establishing that and then</p> <p>16 ensuring its continued upkeep throughout the duration</p> <p>17 of the event.</p> <p>18 Q. I want to talk about both of those. You</p> <p>19 mentioned the program analyst. Was it -- was that a</p> <p>20 particular person during the course of the DAPL</p> <p>21 protest response?</p> <p>22 A. There -- there were many, I believe</p> <p>23 three that I can recall off the top of my head, those</p> <p>24 being Barry Cossey, Cheryl Sam, and a third one would</p> <p>25 have been Darren -- I can't recall Darren's last name,</p>

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18 to 21

<p style="text-align: right;">Page 18</p> <p>1 but I do recall his name being located in Mr. Cruzan's</p> <p>2 deposition.</p> <p>3 Q. Was there overlap between these three?</p> <p>4 In other words, were they working at the same time, or</p> <p>5 was it that one would work, and then when that</p> <p>6 individual completed or finished or left the agency,</p> <p>7 that then it became someone else?</p> <p>8 A. There may have initially, or when one of</p> <p>9 them was new, may have been some initial overlap just</p> <p>10 to kind of show them the ropes, what -- what they were</p> <p>11 doing day-to-day, but that probably would have been</p> <p>12 limited.</p> <p>13 Additionally, I believe towards the end</p> <p>14 of the event, some of that was done remotely rather</p> <p>15 than being physically on-site.</p> <p>16 Q. And what were they doing at the</p> <p>17 response?</p> <p>18 A. So the program analyst had access to our</p> <p>19 Incident Management System. And so if the State or</p> <p>20 Federal partners needed to know what was happening</p> <p>21 from the reservation side, meaning the Bureau of</p> <p>22 Indian Affairs law enforcement, any incident that we</p> <p>23 were responding to or any information they needed out</p> <p>24 of the DOI systems, those program analysts could</p> <p>25 provide that.</p>	<p style="text-align: right;">Page 20</p> <p>1 include the Bureau of Land Management, National Parks</p> <p>2 Service, U.S. Parks Police, U.S. Fish and Wildlife,</p> <p>3 and each would use the same Incident Management</p> <p>4 System.</p> <p>5 Q. Okay. Do you know if any of those law</p> <p>6 enforcement agencies, other than the BIA, were</p> <p>7 involved with respect to the DAPL protests in any way,</p> <p>8 shape, or form?</p> <p>9 A. Towards the conclusion of the event, the</p> <p>10 Bureau of Indian Affairs did request operational</p> <p>11 support from other DOI law enforcement programs, and I</p> <p>12 believe there was a period of approximately 30 days in</p> <p>13 which additional law enforcement officers were sent to</p> <p>14 the Standing Rock Sioux Reservation from other Bureau</p> <p>15 law enforcement programs.</p> <p>16 MR. KERLIN: Okay. And I -- I want to</p> <p>17 pick up at the next exhibit. I'm not sure what was</p> <p>18 the last exhibit that we used. I don't know if the</p> <p>19 court reporter has track of that.</p> <p>20 THE REPORTER: One minute.</p> <p>21 MR. KERLIN: Okay.</p> <p>22 THE REPORTER: I believe we went to 825,</p> <p>23 and then we did enter 832, but not 826 through 831.</p> <p>24 MR. KERLIN: Okay. I can either pick up</p> <p>25 with 826 and then skip 832, or I can just go to 833.</p>
<p style="text-align: right;">Page 19</p> <p>1 Additionally, their primary role was to</p> <p>2 share information from the State and other Federal</p> <p>3 partners back with the Department of Interior and BIA</p> <p>4 for situational awareness.</p> <p>5 Q. Okay. So kind of like a two-way street:</p> <p>6 Information would be shared with State and local; and</p> <p>7 State and local, if there was information that was</p> <p>8 shared by State and local, then the program analyst</p> <p>9 could then make sure that BIA had access to that</p> <p>10 information; is that accurate?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. Would the program analyst have</p> <p>13 access to -- you said the Incident Management System.</p> <p>14 Would that be within the -- the BIA system, or would</p> <p>15 that be broader than that and encompass other federal</p> <p>16 law enforcement or -- or intelligence gathering?</p> <p>17 A. The Incident Management System is</p> <p>18 actually owned and operated by the Department of</p> <p>19 Interior for each of the Bureau law enforcement</p> <p>20 programs, which included the Bureau of Indian Affairs.</p> <p>21 Q. Okay. And the others, would that</p> <p>22 include -- I think I've seen it as Parks. Is there</p> <p>23 a -- is there a Parks police?</p> <p>24 A. Correct. The Department of Interior has</p> <p>25 a number of law enforcement programs, which would</p>	<p style="text-align: right;">Page 21</p> <p>1 I just don't want to double-mark something. Why don't</p> <p>2 I just start at 833, if that's okay with everyone.</p> <p>3 MR. JAFEK: That's fine.</p> <p>4 MR. KERLIN: Okay. Mr. Diaz, if you</p> <p>5 could bring up -- it's ending Bates No. 33754.</p> <p>6 (Deposition Exhibit 833 was remotely</p> <p>7 introduced.)</p> <p>8 Q. (BY MR. KERLIN) Mr. O'Neal, this is an</p> <p>9 email. There's an attachment to it. And I want to</p> <p>10 give you an opportunity to look through it, but I</p> <p>11 think this might be, in part, what you were referring</p> <p>12 to when you mentioned kind of around the tail end of</p> <p>13 the event.</p> <p>14 If we could maybe just scroll through</p> <p>15 the document, so if we can continue, there's an</p> <p>16 attachment. Do you recall Operation Cannonball?</p> <p>17 A. Yes, sir, I do.</p> <p>18 Q. Okay. And I think if we go to this --</p> <p>19 if we go to the -- it's the bottom of this page. It</p> <p>20 says "Assisting Departments and Bureaus"?</p> <p>21 It says "Law" -- excuse me. It says,</p> <p>22 "Law enforcement assistance will be provided to the</p> <p>23 OJS from the following departments and bureaus:</p> <p>24 Department of the Interior (DOI)" --</p> <p>25 MR. JAFEK: Yeah, I'm not -- I'm not</p>

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22 to 25

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1 seeing that part up on the screen. If you could --
2 oh, I see. I can scroll. I apologize. I have some
3 control over it. Thank you.

4 MR. KERLIN: Sure. No problem.

5 Q. (BY MR. KERLIN) So I'm looking at the
6 section where it says "Assisting Departments and
7 Bureaus." And so there's the Department of the
8 Interior. Underneath the Department of the Interior,
9 I think there's some of the -- the law enforcement
10 agencies of the Department of the Interior that you
11 had mentioned, National Park Service, Bureau of Land
12 Management, and Fish and Wildlife Service. Do you see
13 that?

14 A. Yes, sir, I do.

15 Q. Okay. Is this what you were referring
16 to about other law enforcement from the Department of
17 the Interior that were requested at the tail end or
18 could have provided some support at kind of the end of
19 the DAPL protest and the response?

20 A. Yes, sir.

21 Q. Okay. If we can go back to the first
22 page when it talks about the scope. It says, "In
23 response to the Standing Rock Sioux Tribe's request
24 for additional law enforcement officers during DAPL
25 protests, the BIA have requested Intradepartmental law

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1 enforcement aid to assist with public safety and other
2 law-enforcement-related activities on or near the
3 Standing Rock Sioux Reservation in North and South
4 Dakota." Do you see that?

5 A. Yes, sir.

6 Q. So was this Operation Cannonball, was it
7 created because of a request from the Standing Rock
8 Sioux Tribe for additional law enforcement, or from
9 anyone else that was requesting, for instance, State
10 and local or Corps requesting assistance with law
11 enforcement support?

12 A. This would have been at the request of
13 the tribe.

14 Q. Okay. So I guess my question as to why
15 this wasn't done sooner than --

16 And if we go back to the email. I
17 apologize to jump around. It's a little harder to do
18 it remotely than if I had a paper copy to hand you.

19 But if we go back to the first page of
20 this exhibit, which is the email, okay, the date of it
21 is February 14, 2017. So the protests were wrapping
22 up, right?

23 A. That is correct.

24 Q. Okay. And so if my question -- my
25 question is, "Why wasn't this done sooner?" is the

Page 24

1 answer that Standing Rock Sioux Tribe didn't ask for
2 assistance before then?

3 A. So previous, and throughout the duration
4 of the event, the Department, through the Bureau of
5 Indian Affairs, did ensure that additional law
6 enforcement presence was sustained on the reservation
7 and through a detail of BIA officers throughout the
8 country to the location.

9 This particular request, I believe, was
10 along the same time where the tribe was asking
11 protesters to leave the area. There was concern over
12 flooding and cleanup efforts. And so the tribe again
13 made a request for additional law enforcement on the
14 reservation.

15 Q. Okay. But I just want to understand,
16 the concern -- was the concern about the flooding some
17 of the issues that were raised by the executive order
18 issued by Governor Burgum in order to facilitate
19 protesters to leave Corps-managed land, or is it for a
20 different area and different camps?

21 MR. JAFEK: Objection, may call for
22 speculation, vague and confusing. But you can answer.

23 A. My understanding is there was concern
24 from the tribe that any removal of the folks on the
25 Corps-managed lands would result in them transitioning

Page 25

1 over to reservation land, and that was part of what
2 was driving the request for additional law
3 enforcement.

4 Q. (BY MR. KERLIN) Okay. And so Standing
5 Rock -- the Standing Rock Sioux Tribe did not want
6 those protesters that were leaving the Corps-managed
7 land then to end up on their reservation land; is that
8 accurate?

9 MR. JAFEK: Objection, calls for
10 speculation, lack of foundation. But you can answer.

11 A. There was concerns within the tribe over
12 protesters moving on to the reservation.

13 Q. (BY MR. KERLIN) Okay. I think those
14 are all the questions -- let me write down the exhibit
15 number on my document -- that I have on that one. So,
16 yeah, we can take that down.

17 Did BIA ever provide any law enforcement
18 support with respect to protesters that were located
19 on Corps-managed land?

20 A. The -- the Bureau of Indian Affairs did
21 respond off the reservation to Corps-managed lands on
22 two separate occasions. One was the report -- one was
23 a report of a man with a gun shooting; and another
24 actually originated from the reservation of a vehicle
25 pursuit that traveled into the camp there and the

22:15-23:13
401-402

24:15-
25:3
602;
611

-3

23:19-24:14
401-402

25:4-12
401-
402;
602

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26 to 29

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1 Corps-managed lands. Those are the two instances that

2 I'm aware of that the Bureau of Indian Affairs law

3 enforcement responded to Corps-managed lands.

4 Q. Okay. Did the Bureau -- excuse me.

5 Did the Bureau of Indian Affairs do any

6 type of surveillance or information gathering with

7 respect to camps that were not located on reservation

8 lands, so that would have been -- those that would

9 have been located on Corps-managed land?

10 A. If there was any surveillance, it would

11 have been by individual officers, not any surveillance

12 directed by the Department or the Bureau specifically.

13 For instance, I am aware that the State

14 had requested from time to time if we would notify

15 them if we saw large caravans of vehicles, and so if

16 our officers were to observe some activity like that,

17 then that would be reported. But there -- we did not

18 have the resources to dedicate to surveillance.

19 Q. And so those caravans, would those

20 caravans be originating from Corps-managed land?

21 A. That is correct.

22 Q. And then headed off that Corps-managed

23 land onto some other area where the protesters would

24 then engage in protest activities?

25 A. That is correct.

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1 Q. Okay. With respect to the two separate

2 occasions that you mentioned that you're aware of, you

3 said there was a report of a man with a gun; that

4 there had been a shooting. Do you recall about when

5 that would have occurred in the timeline of the -- of

6 the protests?

7 A. I know that would have been 2016. And I

8 know that takes up a lot of time, but I don't -- I

9 don't have that information in -- in front of me at

10 the moment. I could certainly get that date for you,

11 though.

12 Q. And was it -- was it an incident that

13 was -- I guess I'm trying to understand the scope of

14 the BIA's involvement in that particular incident.

15 Do you know if that was, the report came

16 in and they looked into it and it was resolved in a

17 few hours, or if it was something that had a more

18 lengthy investigation?

19 A. After reviewing the incident report, it

20 was clear that BIA officers responded because they

21 were -- they were in fear, if they didn't, there would

22 be loss of life.

23 My understanding is they quickly located

24 a -- an individual who they believed was the reported

25 shooter and got him out of there, and it appears he

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1 was turned over to the FBI.

2 There was, to my underst- -- to the

3 Department's understanding, no investigation or

4 enforcement completed in that incident by the

5 Department of Interior.

6 Q. Okay. And with respect to the vehicle

7 from the reserv- -- I guess originated on the

8 reservation land and then ended up traveling over to

9 Corps-managed land, can you tell me a little bit about

10 the details from that incident?

11 A. Yes. I believe it originated as a

12 reckless driver on the reservation and proceeded into

13 the camp. The vehicle went through, I believe, a

14 tipi, and the BIA officer that responded saw a number

15 of protesters gathering around the vehicle, assaulting

16 the vehicle, assaulting the driver of the vehicle.

17 My understanding, the driver was

18 intoxicated and turned over to the sheriff's office

19 for criminal charges. And there -- the -- there was,

20 again, no enforcement or investigative action there on

21 Corps-managed property, but that was turned over to

22 the State.

23 Q. Okay. Okay. We've gone through a --

24 some different documents, and I got a little ahead of

25 myself, but I mentioned earlier, you're the

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1 representative on behalf of the Department of the

2 Interior. And I wanted to say, and I should have said

3 this at the outset, if you're answering in a capacity

4 other than as a representative of the Department of

5 the Interior, please, you know, let me know.

6 I'm going to go through the topics, some

7 of the -- you know, what we've talked about touches on

8 a couple of the topics, but I did want to make that

9 clear, so that your answers today, unless you indicate

10 otherwise, are as a representative of the Department

11 of the Interior, okay?

12 A. Okay. Thank you.

13 Q. And when did you first have involvement

14 with the DAPL protests?

15 A. So early in 2016 -- I don't have the

16 month directly in front of me -- the Bureau of Indian

17 Affairs was made aware of an incident that occurred

18 off the reservation, and as a result of that incident,

19 the tribal chairman was arrested.

20 That was something that -- that was

21 reported up the chain of command, per our policy,

22 any -- anytime a tribal leader or a significant event

23 occurs. And that's when the Department first began

24 monitoring, if you will, the situation that was

25 ongoing.

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30 to 33

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1 And from that point forward, we slowly
 2 began to get additional reports of information, people
 3 coming into the area, and that, of course, eventually
 4 led to the establishment of the camps there off the
 5 reservation.

6 MR. JAFEK: Paul, if I could interject
 7 and make an objection. I realize I'm a little slow on
 8 this, but you -- you asked the witness to say, you
 9 know, unless he indicated otherwise, that he was
 10 testifying on behalf of the Department of the
 11 Interior. I would just like to object to the extent
 12 that that cannot expand the scope of the topics on
 13 which he's been designated.

14 MR. KERLIN: Sure. That's fine. Yeah.

15 MR. JAFEK: Okay. Thanks.

16 MR. KERLIN: I understand your
 17 objection.

18 Q. (BY MR. KERLIN) Okay. And so -- and
 19 just to be clear, when you said -- what we just
 20 discussed, when you said you became aware of the DAPL
 21 protests and the things that were being heard, that's
 22 on behalf of the Department of the Interior and BIA
 23 specifically, right?

24 A. Yes, sir.

25 Q. Okay. And then the chairman, that would

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1 be Chairman Archambault, was the one who was arrested?

2 A. Yes, sir.

3 Q. And so how -- I guess what I'm trying to
 4 understand is how high up in the organization of the
 5 Department of the Interior did that go with respect to
 6 his arrest?

7 A. Generally, an arrest of the tribal
 8 leader would have made it to the level of the
 9 Assistant Secretary for Indian Affairs.

10 Q. Okay. Would it have been shared with
 11 either the Assistant Secretary or the Secretary of the
 12 Department of the Interior?

13 A. It would have been shared with the
 14 Assistant Secretary of Indian Affairs. I'm unsure
 15 whether that would have been shared with the Secretary
 16 of the Interior.

17 Q. I've seen the acronym ASIA in all caps.
 18 Is that an acronym that is used by the Bureau of
 19 Indian Affairs to refer to the Assistant Secretary of
 20 Indian Affairs?

21 A. That is correct.

22 Q. Okay. Can we bring up Exhibit 739.

23 Mr. O'Neal, this is an exhibit that was
 24 marked for -- and used in Mr. Cruzan's deposition.
 25 It's an email and a forward, and I want to give you an

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1 opportunity to look through it before I have a couple
 2 of questions about it.

3 A. Okay.

4 Q. Okay. Did you make it through to the
 5 end?

6 A. I did, yes. Thank you.

7 Q. Perfect. If we go to the -- the -- I
 8 guess it's going to be the earliest email in the
 9 chain, so the one that's going to be at the bottom of
 10 page 2 and top of page 3, do you see the email from
 11 Chad Harmon?

12 A. Yes, sir.

13 Q. Okay. And is he someone that's assigned
 14 to the Standing Rock Sioux Tribe or had a
 15 responsibility with respect to the Standing Rock Sioux
 16 Tribe?

17 A. Yes, sir. Chad Harmon would have been a
 18 BIA law enforcement officer there on the Standing Rock
 19 Sioux Reservation.

20 Q. Okay. And if we look at that second
 21 paragraph, which starts out -- excuse me, which starts
 22 off, "I have also confirmed that their arrests were
 23 from protest activities at the Dakota Access Pipeline
 24 protest site located approximately 2 1/2 miles north
 25 of the Standing Rock Sioux Indian Reservation boundary

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1 along North Dakota Highway 1806 (off the SRST
 2 reservation)." Do you see that?

3 A. Yes, sir.

4 Q. Okay. And so this email is -- is --
 5 it's forwarded to you, and then you send that on as
 6 well. But I guess at least at the onset, the protest
 7 activities were not occurring on the Standing Rock
 8 Sioux Indian Reservation; is that accurate?

9 A. That is correct, yes, sir.

10 Q. Okay. And so at this point in time,
 11 you're just -- and by "you" I mean BIA -- is just
 12 monitoring the situation, fair?

13 A. That is correct.

14 Q. And if we go to the top email, which is
 15 the one from Director Cruzan -- I'm sorry, if we go
 16 all the way back to page 1. Director Cruzan, so this
 17 is August 14, so a couple days later, asks if there's
 18 "Anything new here? I received an email from ASIA
 19 that alludes that busloads of people are headed that
 20 way." Then he says, "I understand it's off the
 21 reservation, but we should start thinking through what
 22 happens if we get a request from State and local law
 23 enforcement for assistance. I've got no information
 24 that it's going to come, but if it does, it will get
 25 extremely political very quickly, and that decision

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<p style="text-align: right;">Page 34</p> <p>1 will need to have come from me... either way we go.</p> <p>2 We should plan on discussing tomorrow; just be</p> <p>3 thinking about it." Do you see that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. The first question is, how did</p> <p>6 the Assistant Secretary of Indian Affairs have an</p> <p>7 awareness about a busload of people that were headed</p> <p>8 towards the -- I guess the protest area that -- do you</p> <p>9 know where that information was coming from?</p> <p>10 MR. JAFEK: Objection, goes beyond the</p> <p>11 scope of the notice. You -- you can answer in your</p> <p>12 personal capacity.</p> <p>13 And I would also object on that basis on</p> <p>14 speculation.</p> <p>15 A. All the email I'm reading from Darren</p> <p>16 says "alludes" to a busload of people. I -- I have no</p> <p>17 record or I haven't seen any documentation that</p> <p>18 supports the Assistant Secretary received that</p> <p>19 information.</p> <p>20 Q. (BY MR. KERLIN) Okay. It then says, in</p> <p>21 the second sentence, "I understand it's off the</p> <p>22 reservation, but we should start thinking through what</p> <p>23 happens if we get a request from State and local law</p> <p>24 enforcement for assistance."</p> <p>25 Did you have a discussion with anyone in</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. JAFEK: On 20, I think -- I think</p> <p>2 that's -- it refers to "provide or withhold law</p> <p>3 enforcement assistance." I think this is a</p> <p>4 preliminary question to that, internal discussions,</p> <p>5 "what happens if we get one."</p> <p>6 Furthermore, I would object to the</p> <p>7 extent of topic 20 if you're asking a specific</p> <p>8 question with respect to a document. That was</p> <p>9 something that, according to the judge's ruling,</p> <p>10 should have been provided to us ahead of time.</p> <p>11 MR. KERLIN: I disagree with that</p> <p>12 interpretation, but I know we're going to have that</p> <p>13 discussion tomorrow.</p> <p>14 MR. JAFEK: That's fine. I just wanted</p> <p>15 to officially get that objection on the record.</p> <p>16 MR. KERLIN: Okay. I'm going to go back</p> <p>17 to asking Mr. -- the witness a question.</p> <p>18 Q. (BY MR. KERLIN) With respect to that</p> <p>19 sentence I read, that specific email -- you know, so</p> <p>20 it's an email from the director of BIA to you, and it</p> <p>21 says, "if we get that request from State and local law</p> <p>22 enforcement."</p> <p>23 So my question is, did BIA ever get that</p> <p>24 request from State and local for law enforcement</p> <p>25 assistance at any point during the DAPL protests?</p>
<p style="text-align: right;">Page 35</p> <p>1 Bureau of Indian Affairs, at around time period in</p> <p>2 August, the start of the protests, about what to do if</p> <p>3 there is a request from State and local law</p> <p>4 enforcement for assistance?</p> <p>5 MR. JAFEK: Objection --</p> <p>6 A. Yes, there were multiple --</p> <p>7 MR. JAFEK: -- goes beyond the scope of</p> <p>8 the notice. But you can answer in your --</p> <p>9 MR. KERLIN: Okay. Hold on.</p> <p>10 MR. JAFEK: -- personal capacity.</p> <p>11 MR. KERLIN: Hold on real quick. I've</p> <p>12 got an issue with that. So let's look at the notice.</p> <p>13 MR. JAFEK: Okay.</p> <p>14 MR. KERLIN: Let's go to --</p> <p>15 MR. JAFEK: Yeah, if you could -- if you</p> <p>16 could point me to the specific topic it relates to,</p> <p>17 that would -- that would be helpful.</p> <p>18 MR. KERLIN: Specifically, for -- for</p> <p>19 Mr. Cruzan, okay, we're talking about 20, 20 -- 20 and</p> <p>20 21, okay? And then there's also -- so 20, "Decisions</p> <p>21 by USA to provide or withhold law enforcement</p> <p>22 assistance" So it's kind of hard to get one</p> <p>23 that's a little more square than that one. I think</p> <p>24 two others touch on it, but I don't want to waste time</p> <p>25 on the record. Is that sufficient?</p>	<p style="text-align: right;">Page 37</p> <p>1 A. No, sir. It's my understanding the</p> <p>2 department received no request for law enforcement</p> <p>3 assistance off the reservation.</p> <p>4 There were a couple instances where the</p> <p>5 State -- throughout the duration where the State asked</p> <p>6 us to, I believe, close Highway 1806, and which we</p> <p>7 assisted on, but it's my understanding we did not</p> <p>8 receive any formal written request on behalf of the</p> <p>9 Department from the State.</p> <p>10 Q. And I'm not limiting it just to written</p> <p>11 requests, but any requests at all, whether in the form</p> <p>12 of a request through -- through the Congressional</p> <p>13 delegate or anything like that that was made to the</p> <p>14 Department of the Interior, BIA.</p> <p>15 A. I am aware that the Congressional</p> <p>16 delegation submitted two separate letters requesting</p> <p>17 assistance, and I believe those were submitted to the</p> <p>18 Department of Interior, the Department of Justice, and</p> <p>19 the Corps of Engineers, I believe.</p> <p>20 Q. Did BIA ever receive any requests from</p> <p>21 the Corps of Engineers to provide any type of law</p> <p>22 enforcement assistance during the DAPL protests?</p> <p>23 A. No.</p> <p>24 Q. Did you ever discuss with Mr. Cruzan</p> <p>25 about what he meant when he said "it [can] get</p>

ND OBJ:
Introduces
new
material

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<p style="text-align: right;">Page 38</p> <p>1 extremely political very quickly?"</p> <p>2 A. I did not.</p> <p>3 Q. Do you know what he was referring to in</p> <p>4 any discussions you had with him?</p> <p>5 MR. JAFEK: Objection, calls for</p> <p>6 speculation, and I think it goes beyond the scope of</p> <p>7 the notice. But you can answer.</p> <p>8 A. I would assume, because we had a tribal</p> <p>9 chairman arrested and we were hearing that another</p> <p>10 chairman was on his way with a van full of people,</p> <p>11 that that may have been what he was referring to.</p> <p>12 Q. (BY MR. KERLIN) Okay. Can we go to</p> <p>13 Cruzan Exhibit 740. Okay. Mr. O'Neal, this is the</p> <p>14 next email, so --</p> <p>15 MR. KERLIN: Actually, Mr. Diaz, can we</p> <p>16 just show the whole document?</p> <p>17 Q. (BY MR. KERLIN) So if we can go a</p> <p>18 couple pages later, you'll see that this is basically</p> <p>19 the next email in the chain. There's one that's been</p> <p>20 added by you.</p> <p>21 Okay. So if we go to the third page at</p> <p>22 the top, it's the "Anything new . . . I received an</p> <p>23 email from ASIA," that A-S-I-A, that alludes to</p> <p>24 busloads; and then the next email is the one that</p> <p>25 starts on page 1 that is from you to Mr. Cruzan.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes, I was.</p> <p>2 MR. JAFEK: But you could answer.</p> <p>3 A. Yes, sir, I was.</p> <p>4 Q. (BY MR. KERLIN) And were you also aware</p> <p>5 that was something called EMAC that was implemented so</p> <p>6 that law enforcement assistance could come from other</p> <p>7 states and help provide law enforcement support during</p> <p>8 the course of the DAPL protests?</p> <p>9 MR. JAFEK: Same objection.</p> <p>10 Q. (BY MR. KERLIN) Were you aware of that?</p> <p>11 A. Yes, sir, I was.</p> <p>12 Q. Okay. Okay. I want to keep -- I want</p> <p>13 to talk to you a little bit about movement of</p> <p>14 protesters on Corps land, which is one of the topics</p> <p>15 specifically.</p> <p>16 If we can pull up -- it's going to be</p> <p>17 DOI 9107. And I'm going to mark this as Exhibit 30 --</p> <p>18 834, excuse me.</p> <p>19 (Deposition Exhibit 834 was remotely</p> <p>20 introduced.)</p> <p>21 Q. Mr. O'Neal, we put up on the -- yeah,</p> <p>22 we're displaying it. It's a forward of an email.</p> <p>23 There's some information that was provided by email by</p> <p>24 Tom Doering at Morton -- Morton County. Do you see</p> <p>25 that?</p>
<p style="text-align: right;">Page 39</p> <p>1 Okay. Do you recognize this email?</p> <p>2 A. I do.</p> <p>3 Q. Okay. And it's -- it looks like it's</p> <p>4 something that you forwarded that might include</p> <p>5 information from, I guess, Lieutenant Chad Harmon?</p> <p>6 A. That is correct.</p> <p>7 Q. Okay. Okay. You say in that second</p> <p>8 sentence, "Keep in mind if we do get a call to assist,</p> <p>9 it would probably be because a State or local officer</p> <p>10 is facing an immediate imminent threat." What are you</p> <p>11 referring to there?</p> <p>12 A. Nationwide and also at the Standing Rock</p> <p>13 Sioux Reservation, BIA law enforcement at -- during</p> <p>14 this time and historically has always been</p> <p>15 significantly understaffed. And so in general, our</p> <p>16 ability to assist State and local was only in</p> <p>17 emergency situations, and so that was what I was</p> <p>18 referring to there.</p> <p>19 Q. Okay. Were you aware that through the</p> <p>20 course of protests that the State of North Dakota had</p> <p>21 mobilized sheriff deputies and police officers from</p> <p>22 all over the state to respond to law enforcement needs</p> <p>23 during those eight months?</p> <p>24 MR. JAFEK: Objection, goes beyond the</p> <p>25 scope of the notice.</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Yes, sir.</p> <p>2 Q. And then that's forwarded by a Barry</p> <p>3 Case -- Cossey, excuse me, a program analyst. Is</p> <p>4 he one -- he's one of the program analysts that you</p> <p>5 mentioned earlier.</p> <p>6 A. Yes, sir. He was the first.</p> <p>7 Q. And then on top of that is your email</p> <p>8 that you sent out forwarding those. It says, "Let's</p> <p>9 make sure the northern units at least put eyes on the</p> <p>10 campground each hour and report any unusual activity."</p> <p>11 When you say -- when you're referring to</p> <p>12 the northern units, can you tell me what you mean?</p> <p>13 A. Yes, sir. The Standing Rock Sioux</p> <p>14 Reservation is a significantly large reservation, and</p> <p>15 so they had patrol zones. And I believe they had a</p> <p>16 northern and a southern patrol zone. And of course</p> <p>17 the northern units would have been part of that</p> <p>18 northern patrol zone.</p> <p>19 Q. Okay. And when you say, "put eyes on</p> <p>20 the campground," would those be campgrounds that are</p> <p>21 on Corps-managed land?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. Okay. During the DAPL protests, how</p> <p>24 many BIA law enforcement officers were either assigned</p> <p>25 or provided to the Standing Rock Sioux Tribe and the</p>

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<p style="text-align: right;">Page 42</p> <p>1 related efforts by the BIA?</p> <p>2 A. At -- at the time, it's my understanding</p> <p>3 there were approximately 20 full-time employee</p> <p>4 positions, funded positions on the reservation. I</p> <p>5 believe about half of those, so probably 10 to 12,</p> <p>6 were actually filled. So there was an additional 12</p> <p>7 to 18 on detail at any given time to try to remain</p> <p>8 right around 30 law enforcement officers available.</p> <p>9 I know that number fluctuated greatly</p> <p>10 throughout the duration of the event up and down based</p> <p>11 on resource availability nationwide.</p> <p>12 Q. Okay. But just -- I guess to try and</p> <p>13 have an understanding of -- of how many officers, I</p> <p>14 just want to make sure I understand your answer.</p> <p>15 So is it accurate to say that there's a</p> <p>16 total of 30 that would --</p> <p>17 I guess if all roles were filled or all</p> <p>18 positions were filled, then there would be</p> <p>19 approximately 30 officers. And is that, you know,</p> <p>20 during normal time periods or non-DAPL-type protest</p> <p>21 periods at Standing Rock?</p> <p>22 A. No. I believe at the time, Standing</p> <p>23 Rock full-time would have had about 20 employees. And</p> <p>24 so that was likely ten additional law enforcement</p> <p>25 officers more than what they would normally have.</p>	<p style="text-align: right;">Page 44</p> <p>1 would have been disseminated to?</p> <p>2 A. Yes. The primary purpose was to have</p> <p>3 a -- one place where all information could be</p> <p>4 collected and disseminated. That would be a -- a very</p> <p>5 broad update of activities occurring.</p> <p>6 And so it began with an update of what</p> <p>7 was going on, and then each day, additional</p> <p>8 information would be added to that. So if you -- if</p> <p>9 you will, it was a rolling daily update, and so new</p> <p>10 information was generally added, highlighted in red,</p> <p>11 and all the older information in black. And so the</p> <p>12 newest information would be at the top of the</p> <p>13 document.</p> <p>14 That document was shared throughout the</p> <p>15 Bureau of Indian Affairs up to the Assistant Secretary</p> <p>16 of Indian Affairs, who I believe used that document to</p> <p>17 periodically brief the Secretary's office.</p> <p>18 Q. Okay. If we look at this document</p> <p>19 prepared by Morton County law enforcement, or the law</p> <p>20 enforcement -- I'm going to call it a summary</p> <p>21 document, but "Ops Briefing" is, I think, what they</p> <p>22 called it.</p> <p>23 If we go to the second page of it, it</p> <p>24 talks about current operations, and then underneath</p> <p>25 that it has "Summary of Law Enforcement Resources</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Okay. Okay. I want to show you one</p> <p>2 other document while we're talking about the movement</p> <p>3 and -- and things of that nature.</p> <p>4 So DOI 9745. And this will be marked as</p> <p>5 Exhibit 835.</p> <p>6 (Deposition Exhibit 835 was remotely</p> <p>7 introduced.)</p> <p>8 Q. So this is an email. There's an</p> <p>9 attachment to it we'll look through in a minute, but</p> <p>10 it's an email from Darren Smith, who I think is</p> <p>11 another one of the program analysts you mentioned.</p> <p>12 A. Yes. He was the Darren I couldn't</p> <p>13 remember from earlier, Darren Smith.</p> <p>14 Q. And then we have -- if we go to this</p> <p>15 page, "Law Enforcement Sensitive," do you see this?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And -- and this is something that</p> <p>18 would have been prepared by State and local about</p> <p>19 what's going on?</p> <p>20 A. That is correct.</p> <p>21 Q. Okay. Was there a -- you mentioned an</p> <p>22 executive summary that would have been -- that you</p> <p>23 would have had some involvement with during the course</p> <p>24 of the protests. Can you tell me what was the purpose</p> <p>25 of that executive summary, and then also who that</p>	<p style="text-align: right;">Page 45</p> <p>1 Available." I think I know the answer to this, and I</p> <p>2 think it's clear from your testimony earlier, but I</p> <p>3 just want to make it clear.</p> <p>4 And then also could we pull up the one</p> <p>5 underneath it, "Summary of other resources available."</p> <p>6 I don't see anything on here, so a</p> <p>7 summary of what the operations briefing was, and this</p> <p>8 is dated October 18 of 2016, that there's any</p> <p>9 resources from Department of the Interior or -- or</p> <p>10 Bureau of Indian Affairs. Would you agree with me</p> <p>11 that there weren't law enforcement resources that were</p> <p>12 made available to State and local?</p> <p>13 A. So there were certainly Bureau of Indian</p> <p>14 Affairs officers available on the reservation.</p> <p>15 However, resource dependent, unsure whether or not</p> <p>16 they would have been available.</p> <p>17 But they're clearly not indicated on</p> <p>18 the -- the document here.</p> <p>19 Q. And I guess my question is, is that</p> <p>20 because they would have been limited in some way to</p> <p>21 only responding or conducting law enforcement</p> <p>22 activities on the Standing Rock Sioux Indian</p> <p>23 Reservation land as opposed to any other land?</p> <p>24 MR. JAFEK: Objection, may call for a</p> <p>25 legal conclusion.</p>

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<p style="text-align: right;">Page 46</p> <p>1 Q. (BY MR. KERLIN) You can answer if you</p> <p>2 know.</p> <p>3 A. I apologize, Paul and Tim. I thought</p> <p>4 you would indicate after an objection whether to</p> <p>5 proceed with answering.</p> <p>6 So, my -- my assumption on this, Paul,</p> <p>7 is that the State either didn't ask the Department or</p> <p>8 the Bureau for what our numbers were, or weren't aware</p> <p>9 of what our numbers were. But either way, clearly</p> <p>10 whoever prepared the document didn't list those BIA</p> <p>11 resources that may or may not be available.</p> <p>12 Q. Let me ask you this: If the call came,</p> <p>13 would BIA have been able to provide off-reservation</p> <p>14 law enforcement support in a nonemergency role,</p> <p>15 capacity?</p> <p>16 MR. JAFEK: Objection, calls for</p> <p>17 speculation, may call for a legal conclusion. You can</p> <p>18 answer.</p> <p>19 And, also, Jason, unless I tell you you</p> <p>20 can't answer, go ahead and answer. But I'll try to</p> <p>21 remember to say you can answer so you can answer.</p> <p>22 THE DEPONENT: Okay. Thank you, Tim.</p> <p>23 A. Yes. There would have been officers</p> <p>24 available. However, I can tell you that each of those</p> <p>25 would have been a case-by-case determination. And so,</p>	<p style="text-align: right;">Page 48</p> <p>1 to the -- it's another forwarded email chain. The</p> <p>2 first one is from JH Wilson, Chief Prosecutor,</p> <p>3 Standing Rock Sioux Tribe.</p> <p>4 Eventually this works its way to you,</p> <p>5 but he says, "Contrary to our conversation last week,</p> <p>6 Judge Swallow has asserted the Tribal Court's</p> <p>7 jurisdiction over the North Camp, as well as Rosebud</p> <p>8 and Sacred Stone. This means if Security from the</p> <p>9 North Camp brings people to the Reservation and</p> <p>10 asserts that a crime has occurred in the North Camp,</p> <p>11 you are empowered to arrest that individual." Do you</p> <p>12 see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. And we're going to work our way</p> <p>15 up. That's forwarded to -- it goes from Jeff Ward to</p> <p>16 Eddie Smart, and then Eddie Smart to William McClure</p> <p>17 and to you.</p> <p>18 And then you send something that there's</p> <p>19 a redaction. Part of this is redacted. It says</p> <p>20 "Gentlemen, Redacted." And then it says, "Eddie, Make</p> <p>21 sure our guys do not arrest for tribal offenses off</p> <p>22 the reservation." Do you see that?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. In this email, are you</p> <p>25 instructing -- I'm looking for Eddie's last name, and</p>
<p style="text-align: right;">Page 47</p> <p>1 you know, while there would have been officers there,</p> <p>2 as you probably saw in my earlier email, we would</p> <p>3 likely have only got a request or responded to a</p> <p>4 request in an emergency situation.</p> <p>5 Q. (BY MR. KERLIN) Okay. Can we pull</p> <p>6 up -- it's DOI 27254, and I'll mark that as</p> <p>7 Exhibit 835 [sic], I think we're up to.</p> <p>8 MR. JAFEK: Did we mark -- was the last</p> <p>9 one was with DOI 9745, was that marked with an exhibit</p> <p>10 number?</p> <p>11 MR. KERLIN: 834.</p> <p>12 MR. JAFEK: I have 834 as 9017 [sic].</p> <p>13 MR. KERLIN: So am I one off?</p> <p>14 MR. JAFEK: I think so.</p> <p>15 MR. KERLIN: Okay.</p> <p>16 MR. JAFEK: Maybe the court reporter can</p> <p>17 help us.</p> <p>18 MR. DIAZ: Correct. 835 is 9745, and</p> <p>19 836, which was called right now, is 27254.</p> <p>20 MR. KERLIN: Okay. Thank you for that.</p> <p>21 So 836. Thank you for clarifying that.</p> <p>22 (Deposition Exhibit 836 was remotely</p> <p>23 introduced.)</p> <p>24 Q. (BY MR. KERLIN) Mr. O'Neal, I'm showing</p> <p>25 you an email that we have up on the screen. If we go</p>	<p style="text-align: right;">Page 49</p> <p>1 I don't seem to see it at the moment. But are you</p> <p>2 instructing Mr. Smart that there shouldn't be arrests</p> <p>3 for tribal offenses when they're not on Standing Rock</p> <p>4 Sioux Indian Reservation land?</p> <p>5 A. Yes, sir, that is correct.</p> <p>6 Q. Okay. So just to be clear, BIA, based</p> <p>7 on what your directive is here, would not be able to</p> <p>8 make arrests off of the reservation, so that would</p> <p>9 include -- my question would be, would that include</p> <p>10 protesters along 1806, protesters on Corps-managed</p> <p>11 land, and protesters at other sites that wouldn't be</p> <p>12 on the reservation or on Corps land?</p> <p>13 A. A little bit of a complicated question,</p> <p>14 Paul. The B- -- the tribe's criminal jurisdiction is</p> <p>15 limited to offenses that occur on the reservation.</p> <p>16 The Bureau of Indian Affairs' authority is also</p> <p>17 limited to crimes that occur on the reservation. The</p> <p>18 BIA could make an arrest off the reservation for a</p> <p>19 crime that occurred on the reservation.</p> <p>20 Q. Okay. And then just to kind of complete</p> <p>21 that, BIA, is it accurate, could not make arrests for</p> <p>22 crimes that occurred off of reservation land?</p> <p>23 MR. JAFEK: Objection, calls for a legal</p> <p>24 conclusion. But you can answer.</p> <p>25 A. BIA's statutory authority does include</p>

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1 assisting, upon request, any state, local, tribal, or
 2 federal law enforcement agency with the enforcement of
 3 their laws and regulations. So I do believe we could,
 4 upon request, assist another agency, which would
 5 include enforcement and arrest.
 6 Q. (BY MR. KERLIN) Great. Would the
 7 request have to be directly to BIA, or could the
 8 request go to, for instance, the Secretary of the
 9 Department of the Interior or another federal agency
 10 and work its way down to BIA?
 11 MR. JAFEK: Objection, calls for a legal
 12 conclusion. But you can answer.
 13 A. In -- in general, we've always asked the
 14 request be in writing, with the exception if it's an
 15 emergency situation. But I can tell you it's standard
 16 practice if -- if a law enforcement agency in an
 17 emergency situation requests our assistance, resource
 18 dependent, we try to assist where we can.
 19 MR. KERLIN: I tell you what, we've been
 20 going about an hour. Why don't we take a ten-minute
 21 break, and then we'll pick up from there, if that's
 22 okay with everyone. So maybe -- it's 11: -- it would
 23 be 11:15 my time, 10:15 Mountain.
 24 THE VIDEOGRAPHER: Going off the record.
 25 The time is 5:05 p.m. UTC, 10:05 a.m. Mountain.

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1 (Recess taken 10:05 a.m. to 10:15 a.m.
 2 Mountain Standard Time.)
 3 THE VIDEOGRAPHER: We're back on the
 4 record. The time is 5:15 p.m. UTC, 10:15 a.m.
 5 Mountain.
 6 Q. (BY MR. KERLIN) Mr. O'Neal, back after
 7 a short break. Are you able to continue?
 8 A. Yes, sir.
 9 Q. Any testimony that you would add to,
 10 change, or modify that you've already given today?
 11 A. No, sir.
 12 Q. Okay. I want to pull up Exhibit 803,
 13 which is the notice. And if we can go to page 5, I
 14 want to talk to you about one of the topics in
 15 particular, topic No. 6. "Public statements made by
 16 government officials about any application for DAPL
 17 Special Use Permits or any decisions made or actions
 18 taken regarding such applications."
 19 With respect to the Department of the
 20 Interior, Mr. O'Neal, were there any public statements
 21 made by the Department of the Interior about
 22 applications for a DAPL special-use permit?
 23 A. No, sir.
 24 Q. Were there any decisions made or actions
 25 taken regarding -- regarding such applications by

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1 anyone at the Department of the Interior?
 2 A. I apologize, Paul. When you say
 3 "decisions made or actions taken," that was in regards
 4 to the special-use permit again?
 5 Q. Yes, sir.
 6 A. Okay. No, I -- the Department did not
 7 have any actions or decisions regarding the
 8 special-use permit.
 9 Q. Okay. Okay. Thank you. We can take
 10 that down.
 11 During the DAPL protests, did you
 12 have -- did you receive any guidance or direction from
 13 Larry Roberts?
 14 MR. JAFEK: And I would object that
 15 that's beyond the scope of the topic, as far as I can
 16 tell. But you can answer in your personal capacity.
 17 A. It is my understanding that Director
 18 Cruzan had discussions with Assistant Secretary
 19 Roberts. I do not believe any specific direction was
 20 provided.
 21 Q. (BY MR. KERLIN) Okay. What about with
 22 respect to Secretary Jewell? What about her
 23 involvement with the DAPL protests and the protest
 24 response, any guidance or direction that -- that was
 25 received from her?

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1 MR. JAFEK: Same objection. You can
 2 answer.
 3 A. In my personal capacity, I would only be
 4 able to reflect on what was in her deposition as far
 5 as her involvement, which it does not appear she
 6 provided any direction.
 7 Q. (BY MR. KERLIN) Okay. I want to talk
 8 to you about topic 21. It's "The decision to issue
 9 and the contents of the Joint Statements released on
 10 September 9, 2016, and October 10, 2016, from the
 11 Department of Justice, Department of the Interior, and
 12 Department of the Army."
 13 I want to pull up first the earliest one
 14 in time, which would be the September 9, 2016, one.
 15 It's previously been marked as Exhibit 494.
 16 Okay. And this is the email that
 17 forwards it. It has the Department of the Interior
 18 seal there on the left. You'll see the last sentence
 19 says, "See below a joint statement by the Department
 20 of the Army, the Department of Justice, and the
 21 Department of the Interior."
 22 Before we get to the statement,
 23 Mr. O'Neal, are you familiar with this statement?
 24 A. I am, yes, sir.
 25 Q. Did you have any involvement with this

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 new material

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1 statement before preparing for your deposition?

2 A. I did not.

3 Q. Were you aware of this -- the joint

4 statement at the time it was issued?

5 MR. JAFEK: I would object to the extent

6 that this goes beyond the scope of the notice, but he

7 can answer in his personal capacity.

8 A. Yeah, if this was an email sent to all

9 of DOI employees, Paul, I likely would have received

10 it, but I didn't recall seeing it prior to preparation

11 for the deposition.

12 Q. (BY MR. KERLIN) Okay. And -- and it's

13 a statement that was issued -- if we go down now to

14 the statement, it's -- it's issued after there was a

15 decision from the District Court on the U.S. Corps --

16 U.S. Army Corps of Engineers. It was a lawsuit

17 between Standing Rock Sioux Tribe and the U.S. Army

18 Corps of Engineers.

19 My first question is -- and I think it's

20 directly on topic of the -- and it's not

21 controversial, about the -- it's topic 21 -- who made

22 the decision to issue this joint statement on behalf

23 of the Department of the Interior?

24 A. So, Paul, our solicitor's office was

25 able to research both the September and, I believe,

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1 October joint statements, and those statements

2 generally went through the Department's communication

3 office and made the rounds through senior leadership

4 and the Secretary's office before ultimately, I

5 believe, going back to the Corps of Engineers.

6 And from the communication that I

7 reviewed, it was a review and a clearance, meaning the

8 Department didn't have any edits to the release.

9 Q. Okay. So just so that I understand

10 correctly, one of the other agencies or departments,

11 so Department of Justice or Department of Army, would

12 have written it up, and then the Department of the

13 Interior agreed to it? Is that accurate?

14 MR. JAFEK: I -- I would object to the

15 extent that Mr. O'Neal is only designated with respect

16 to topic 21 as to the identity of whose decision

17 within the Department of the Interior it was to issue

18 each of those statements.

19 But you can answer, Mr. O'Neal, in your

20 personal capacity.

21 MR. KERLIN: Well, hold on. I don't

22 really want to go there yet. I'm just trying to

23 follow up on what he just testified about when I asked

24 him who him made the decision.

25 Q. (BY MR. KERLIN) And so, again, this is

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1 in a representative capacity: Who made the decision

2 to issue this joint statement on behalf of the

3 Department of the Interior?

4 MR. JAFEK: And that's fine. You can

5 answer that, Mr. O'Neal.

6 A. Paul, I -- my understanding, and in

7 reviewing the information our solicitor's office was

8 able to research, was that the press release was

9 reviewed by a number of people, and so it did not

10 clearly indicate that there was one sole person from

11 the Department of the Interior that cleared the

12 language in the press release, but, rather, it went

13 through a number of offices before being returned.

14 Q. (BY MR. KERLIN) Okay. Is there someone

15 at the Department of the Interior that would have to

16 have a certain level of authority to permit the

17 Department of the Interior to be part of the

18 statement? In other words, would it have to be

19 someone of a particular status or a particular office

20 in order to be able to say, "This is, in fact, a

21 statement on behalf of the Department of the

22 Interior"?

23 MR. JAFEK: And I would object that that

24 goes beyond the scope. But you can answer,

25 Mr. O'Neal.

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1 MR. KERLIN: I disagree with the

2 objection, but, yeah, we can take that up later.

3 A. My -- my understanding -- my

4 understanding is the Department's deputy director of

5 communications would have been the individual that

6 communicated and was responsible for any type of press

7 release and circulating those to the appropriate

8 offices for review.

9 I'm -- I'm unaware of any official

10 department policy that would designate someone with

11 the sole authority of making that determination or

12 release.

13 Q. (BY MR. KERLIN) Okay. But by issuing

14 this statement, it is, I guess, an authorized

15 statement on behalf of the Department of the Interior,

16 right?

17 A. Correct.

18 Q. And so that the Department of the

19 Interior would be bound by the words contained in it,

20 correct?

21 MR. JAFEK: Objection, vague and

22 ambiguous. But you can answer.

23 MR. KERLIN: I want to rephrase the

24 question, then.

25 Q. (BY MR. KERLIN) This statement that's

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<p style="text-align: right;">Page 58</p> <p>1 on Department of the Interior -- it has the seal, and</p> <p>2 it says, "Joint Statement from the Department of</p> <p>3 Justice, the Department of the Army, and the</p> <p>4 Department of the Interior." Is the Department of the</p> <p>5 Interior manifesting in it to be bound by what's</p> <p>6 contained on the very words they put out there and</p> <p>7 said it's their statement?</p> <p>8 MR. JAFEK: Same objection. You can</p> <p>9 answer.</p> <p>10 A. Paul, I believe the Department's, as far</p> <p>11 as Interior's role in this release, was primarily</p> <p>12 assisting the tribe and the other federal agencies.</p> <p>13 And so in that respect, yes, you know, they -- the</p> <p>14 information in the release would be accurate.</p> <p>15 Q. (BY MR. KERLIN) And I understand, and I</p> <p>16 want to make sure it's clear with Mr. Jafek.</p> <p>17 MR. KERLIN: So part of our topic, we</p> <p>18 contend, includes input into this press release,</p> <p>19 edits, words, who typed it up, that sort of thing,</p> <p>20 what was considered before the words were put on the</p> <p>21 page.</p> <p>22 Is it my understanding, Mr. Jafek, that</p> <p>23 Mr. O'Neal is not going to be providing testimony on</p> <p>24 behalf of the Department of the Interior?</p> <p>25 MR. JAFEK: He's been designated with</p>	<p style="text-align: right;">Page 60</p> <p>1 Interior specifically, so --</p> <p>2 MR. JAFEK: Yeah. Could we -- could</p> <p>3 we -- Paul, if possible, could we go off the record</p> <p>4 for about five minutes? And I would like to have a</p> <p>5 brief conversation with Mr. O'Neal, and maybe we can</p> <p>6 move forward on that issue as a result of that</p> <p>7 conversation.</p> <p>8 MR. KERLIN: Yeah, sure.</p> <p>9 MR. JAFEK: Okay. So we'll go off the</p> <p>10 record.</p> <p>11 THE VIDEOGRAPHER: Going off the record.</p> <p>12 The time is 5:28 p.m. UTC, 10:28 a.m. Mountain.</p> <p>13 (Recess taken 10:28 a.m. to 10:31 a.m.</p> <p>14 Mountain Standard Time.)</p> <p>15 THE VIDEOGRAPHER: We are back on the</p> <p>16 record. The time is 5:31 p.m. UTC, 10:31 a.m.</p> <p>17 Mountain.</p> <p>18 Q. (BY MR. KERLIN) Mr. O'Neal, we're back</p> <p>19 after a break. You had an opportunity to talk with</p> <p>20 counsel. Anything you want to add to your answers to</p> <p>21 any of the questions today?</p> <p>22 A. Yes, Paul. In respect to the joint</p> <p>23 statement issued September 9, information our</p> <p>24 solicitor's office was able to research is that DOI</p> <p>25 Solicitor Hilary Tompkins emailed Sam Hirsch, who is</p>
<p style="text-align: right;">Page 59</p> <p>1 respect to topic 21 only with respect to the identity</p> <p>2 of whose decision it was within the Department of the</p> <p>3 Interior to -- to issue the joint statement.</p> <p>4 So I think those specific questions you</p> <p>5 have about, sort of, input, edits, those sorts of</p> <p>6 things, I think it goes beyond the scope of that.</p> <p>7 Of course, this became clear in the</p> <p>8 deposition of Ms. Kelley Gipe. We have a dispute as</p> <p>9 to whether -- as to the -- as to the scope of topic 21</p> <p>10 and -- in general, and I think we discussed that on</p> <p>11 the record extensively in that other deposition.</p> <p>12 MR. KERLIN: Okay. I understand your</p> <p>13 objection. I understand that you're hereby limiting</p> <p>14 the witness to testify anything further than the</p> <p>15 individual. Now he said a number of individuals were</p> <p>16 involved, so I don't think I have a clear answer on</p> <p>17 that.</p> <p>18 I do have a clear answer on who would</p> <p>19 have been authorized, I believe, but I still don't</p> <p>20 think I have specifically the person who said -- you</p> <p>21 know, green-lighted it. And so I don't think I've</p> <p>22 gotten an answer to that.</p> <p>23 And I don't want to give Mr. O'Neal a</p> <p>24 hard time, but I just think we're entitled to know who</p> <p>25 authorized it on behalf of the Department of the</p>	<p style="text-align: right;">Page 61</p> <p>1 the principal deputy attorney general at ENRD, on that</p> <p>2 morning stating that DOI leadership had cleared the</p> <p>3 final statement that Sam had sent earlier.</p> <p>4 And so the leadership at that time that</p> <p>5 that clearance had gone through was, of course, Hilary</p> <p>6 Tompkins; Tommy Beaudreau, who is the chief of staff;</p> <p>7 Michael Connor, who is the deputy secretary; Larry</p> <p>8 Roberts, principal deputy assistant secretary of</p> <p>9 Indian Affairs; and Blake Androff, who is the director</p> <p>10 of communications.</p> <p>11 And from -- from the review of the email</p> <p>12 traffic, it appeared that each of those individuals</p> <p>13 had reviewed this statement.</p> <p>14 The Secretary was notified a release was</p> <p>15 going out, but was not involved in the review or</p> <p>16 clearance of that release.</p> <p>17 Q. Okay. Thank you for that answer.</p> <p>18 Was -- was there any -- and this is</p> <p>19 based upon an answer that you provided earlier, but</p> <p>20 was there any edits that were made by the Department</p> <p>21 of the Interior to the joint statement, to your</p> <p>22 knowledge?</p> <p>23 MR. JAFEK: I'm going to object that</p> <p>24 that goes beyond -- beyond what he's been designated</p> <p>25 for.</p>

60:18-61:16 401-402

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62 to 65

<p style="text-align: right;">Page 62</p> <p>1 But you can answer in your personal</p> <p>2 capacity.</p> <p>3 A. I -- I am not aware, Paul.</p> <p>4 Q. (BY MR. KERLIN) Okay. Would the</p> <p>5 individuals that you mentioned with respect to DO- --</p> <p>6 Department of Interior leadership -- strike that.</p> <p>7 Okay. I want to talk to you a little</p> <p>8 bit about the contents of Exhibit 494. If we go to</p> <p>9 page 2 of it. All right.</p> <p>10 So there's a paragraph that starts,</p> <p>11 "Finally, we . . . support the rights of all Americans</p> <p>12 to assemble and speak freely."</p> <p>13 The last sentence of that paragraph</p> <p>14 says, "The Departments of Justice and the Interior</p> <p>15 will continue to deploy resources to North Dakota to</p> <p>16 help state, local, and tribal authorities, and the</p> <p>17 communities they serve, better communicate, defuse</p> <p>18 tensions, support peaceful protest, and maintain</p> <p>19 public safety."</p> <p>20 My question is, with respect to the</p> <p>21 resources that were deployed to North Dakota to help</p> <p>22 state, local, and tribal authorities, what was</p> <p>23 provided with respect to those resources from the</p> <p>24 Department of the Interior?</p> <p>25 A. Paul, as I mentioned earlier, the</p>	<p style="text-align: right;">Page 64</p> <p>1 I want to move on to the next exhibit</p> <p>2 that -- that was a joint statement, which is going to</p> <p>3 be at Exhibit 821. Mr. O'Neal, are you familiar with</p> <p>4 this document? 64:1-65:4 401-402</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. And this is the -- the joint</p> <p>7 statement from the Department of Justice, Army, and</p> <p>8 Interior, dated Monday, October 10, 2016.</p> <p>9 Still -- still on topic 21: Can you</p> <p>10 tell me who made the decision about issuing this press</p> <p>11 release?</p> <p>12 A. Yes, sir, if I could, similar to the</p> <p>13 last one, the solicitor's office review and our</p> <p>14 internal records.</p> <p>15 So Wyn Hornbuckle from the Department of</p> <p>16 Justice communications office sent the communication</p> <p>17 to Jessica Kershaw, who is the Department of</p> <p>18 Interior's deputy director of communications, and</p> <p>19 other federal communication contacts with this</p> <p>20 proposed statement.</p> <p>21 And then Jessica Kershaw from DOI</p> <p>22 replied that DOI was okay with the wording and the</p> <p>23 statement.</p> <p>24 Based on the email traffic, it looks</p> <p>25 like Hilary -- again Hilary Tompkins, Tommy Beaudreau,</p>
<p style="text-align: right;">Page 63</p> <p>1 additional law enforcement resources to the Standing</p> <p>2 Rock Sioux Tribe; as well as key leadership from the</p> <p>3 Bureau of Indian Affairs Office of Justice Services to</p> <p>4 that area; and then finally the assignment of the</p> <p>5 program analyst to aid in information sharing there,</p> <p>6 were the additional resources that were currently</p> <p>7 deployed and deployed throughout the duration of the</p> <p>8 event.</p> <p>9 Q. Got it. And with respect to the law</p> <p>10 enforcement agents from the Department of the Interior</p> <p>11 from BIA, those would have been primarily to focus</p> <p>12 upon the Standing Rock Sioux Indian Reservation land</p> <p>13 as opposed to the Corps-managed land, correct?</p> <p>14 A. That is correct.</p> <p>15 Q. But the analyst you mentioned, the</p> <p>16 program analyst, that person or persons, because I</p> <p>17 know there was more than one, did share information</p> <p>18 back and forth between State and local and your --</p> <p>19 your Information Management System for BIA?</p> <p>20 A. That is correct, yes, sir.</p> <p>21 Q. Okay. I have some other questions about</p> <p>22 the content of this exhibit; however, your counsel has</p> <p>23 said that you're not designated on the content, just</p> <p>24 the decision. I think you've answered that for us,</p> <p>25 which I appreciate.</p>	<p style="text-align: right;">Page 65</p> <p>1 and Larry Roberts reviewed that statement, so several</p> <p>2 from the -- the previous -- and, again, the Secretary</p> <p>3 was notified but was not involved in the review or</p> <p>4 clearance.</p> <p>5 Q. Okay. Did Jessica Kershaw make any</p> <p>6 edits, changes, or modifications to this statement?</p> <p>7 MR. JAFEK: I would object that that's</p> <p>8 beyond the scope of what he's been designated for for</p> <p>9 topic 21.</p> <p>10 But you can answer in your personal</p> <p>11 capacity.</p> <p>12 A. I am unaware, Paul.</p> <p>13 Q. (BY MR. KERLIN) Okay. Wyn Hornbuckle,</p> <p>14 he works for the Department of Justice; is that</p> <p>15 correct? 65:13-22 401-402</p> <p>16 A. That is correct, yes, sir.</p> <p>17 Q. Okay. So DOJ sent the draft to Jessica</p> <p>18 Kershaw; is that -- I was just trying to understand</p> <p>19 your answer.</p> <p>20 A. Yes. The research I was -- received</p> <p>21 says "proposed," so I'm assuming that could be</p> <p>22 replaced with "draft."</p> <p>23 MR. KERLIN: Okay. Okay. And with</p> <p>24 respect to the -- with respect to questions regarding</p> <p>25 the contents, is this witness also not designated</p>

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66 to 69

<p style="text-align: right;">Page 66</p> <p>1 to -- to answer questions about the contents of</p> <p>2 Exhibit 821 and the press release issued on</p> <p>3 October 10, 2016, on behalf of the three agencies?</p> <p>4 MR. JAFEK: That's correct. To the</p> <p>5 extent that the contents -- you know, the contents of</p> <p>6 the joint statements per se.</p> <p>7 You know, if there's -- if there's parts</p> <p>8 of the joint statement that overlap with, you know,</p> <p>9 information in other topics, you know, just because</p> <p>10 it's in here doesn't mean that he couldn't answer it</p> <p>11 if it was part of some other topic.</p> <p>12 MR. KERLIN: Okay.</p> <p>13 Q. (BY MR. KERLIN) Well, let me ask you on</p> <p>14 821, while we have it up here, it's the paragraph that</p> <p>15 starts, "The Army." It says, "The Army continues to</p> <p>16 review issues raised by the Standing Rock Sioux Tribe</p> <p>17 and other Tribal nations and their members and hopes</p> <p>18 to conclude its ongoing review soon."</p> <p>19 Were there any issues raised by the</p> <p>20 Standing Rock Sioux Tribe to the Bureau of Indian</p> <p>21 Affairs or the Department of the Interior? I'm just</p> <p>22 trying to understand why it was limited to the Army,</p> <p>23 if you know.</p> <p>24 MR. JAFEK: And I would say beyond --</p> <p>25 beyond the scope. But if you know in your personal</p>	<p style="text-align: right;">Page 68</p> <p>1 know, it's from all -- all the agencies, but then</p> <p>2 there's specific things that are attributed to "the</p> <p>3 Army does this" or "the Army is doing that," as</p> <p>4 opposed to "the Department of the Interior and BIA."</p> <p>5 But I would assume, since it does involve tribal</p> <p>6 consultation and -- and Native Americans, that BIA</p> <p>7 would, in fact, be involved with that, so -- okay.</p> <p>8 Makes sense.</p> <p>9 All right. Let's -- let's keep moving.</p> <p>10 With respect to the information</p> <p>11 gathering that BIA was doing with respect to tribal --</p> <p>12 excuse me, with respect to the protesters' movements,</p> <p>13 was there any observed increase in the intensity of</p> <p>14 the protests or the number of protesters after the</p> <p>15 September 9, 2016, joint statement was issued?</p> <p>16 A. I would have to review back through the</p> <p>17 materials. I do know, as part of that daily briefing,</p> <p>18 there was information reported up regarding estimated</p> <p>19 size of the camps and -- and activity observed from</p> <p>20 the Bureau of Indian Affairs from the reservation</p> <p>21 side. But I would -- would need to review a couple of</p> <p>22 those dates directly after those releases were made.</p> <p>23 Q. And would that be the same for the</p> <p>24 October 10, 2016, release?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 67</p> <p>1 capacity, go ahead.</p> <p>2 A. Paul, only in my preparation and review</p> <p>3 of the Secretary's deposition and some of her</p> <p>4 communications. And, you know, I think she did a good</p> <p>5 job of representing that the Department's role in this</p> <p>6 matter was really making sure that all executive</p> <p>7 branch agencies were fulfilling their responsibilities</p> <p>8 in consultations with tribes.</p> <p>9 Q. (BY MR. KERLIN) And that kind of</p> <p>10 targets a little bit of the last paragraph in this</p> <p>11 press release, which is, "We also look forward to a</p> <p>12 serious discussion regarding" -- excuse me, "during a</p> <p>13 series of consultations, starting with a listening</p> <p>14 session in Phoenix on Tuesday, on whether there should</p> <p>15 be nationwide reform on the Tribal consultation</p> <p>16 process for these types of infrastructure projects."</p> <p>17 That is very similar to the testimony</p> <p>18 that Ms. Jewell provided, correct, about listening</p> <p>19 sessions and consultation with the tribes?</p> <p>20 A. That -- that is correct. And,</p> <p>21 generally, the Department of the Interior and Bureau</p> <p>22 of Indian Affairs take a lead role in -- in those</p> <p>23 consultations.</p> <p>24 Q. And that makes sense to me. I was</p> <p>25 just -- you know, part of this statement was -- you</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. Okay. I want to look at topic</p> <p>2 No. 10. And this states, "Actions considered and</p> <p>3 taken by U.S.A. in response to the use or occupation</p> <p>4 of Corps-managed lands by someone without either</p> <p>5 written permission or a Special Use Permit." And</p> <p>6 there's some limitations to it with respect to the</p> <p>7 area for the United States Corps of Engineers, their</p> <p>8 Northwest Division. 69:9-15 401-402</p> <p>9 With respect to the Department of the</p> <p>10 Interior, were there any actions taken or considered</p> <p>11 in response to the use or occupation of Corps-managed</p> <p>12 land by someone without either written permission or a</p> <p>13 special-use permit?</p> <p>14 A. No, there were no actions taken or</p> <p>15 considered by the Department of Interior.</p> <p>16 Q. And is that -- I mean, I kind of want to</p> <p>17 understand the why, if -- if you know. Is that</p> <p>18 because it was Corps-managed land and it wasn't, for</p> <p>19 instance, Standing Rock Indian Reservation land? In</p> <p>20 other words, it was not something that would kind of</p> <p>21 fall inside of the BIA purview?</p> <p>22 A. That -- that is correct. The Department</p> <p>23 would be interested from a situational awareness,</p> <p>24 particularly with the events that were happening at</p> <p>25 the time, but would not have a direct role in -- in</p>

69:16-70:
10 for
completeness if
objection
above
overruled

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1 that special-use permit.

2 Q. That would, in essence --

3 It's Corps-managed land, and so the BIA

4 doesn't have responsibility for law enforcement

5 activities on, for instance, Corps-managed land --

6 A. Right.

7 Q. -- other than what you mentioned earlier

8 on a couple of -- you know, there's some limitations

9 to that, but in general, right?

10 A. That is correct.

11 Q. Okay. Okay. Let's take a look at

12 topic 13, just below it. "Actions taken by the

13 United States . . . during the DAPL Protests regarding

14 Corps-managed land used or affected by the DAPL

15 Protests to," and I'm going to go through each of the

16 individual subcategories, the first being "protect the

17 health and safety of persons on Corps-managed land."

18 Anything that the Department of the Interior did with

19 respect to "protect the health and safety of persons

20 on Corps-managed land"?

21 A. Paul, outside of the two instances I --

22 I related where our law enforcement did respond to

23 those -- those instances, the Department did not take

24 any -- any additional actions.

25 Q. And I believe -- I just want to make

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1 sure I have this answer correct. Did the Corps of

2 Engineers ever ask BIA or the Department of the

3 Interior to take any such actions on Corps-managed

4 land during the protests?

5 A. No, sir, they did not.

6 Q. Okay. I just want to make sure you

7 understood that. I wasn't talking about the two

8 instances you mentioned, but other than those, was

9 there any Corps -- any Corps requests to BIA or

10 Department of Interior to help in "protect the health

11 and safety of persons on Corps-managed land"?

12 A. No, sir, there were no requests to the

13 Department of Interior or the Bureau of Indian

14 Affairs.

15 Q. Okay. The next category, it would be

16 "Actions taken by the United States," Department of

17 the Interior or BIA, "to protect Corps-managed lands

18 from environmental harm or degradation." Any such

19 actions taken?

20 A. No, sir. There were no actions by the

21 Department of Interior.

22 Q. "Prevent unlawful or unsafe activities

23 on Corps-managed lands." We've talked about the two

24 instances you mentioned, which could, I guess, in my

25 opinion, be unlawful or unsafe.

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1 Anything other than those two that we've

2 discussed?

3 A. No, sir, nothing other than those two.

4 Q. The fourth is "to clear Corps-managed

5 lands in the first quarter of 2017." Any -- any

6 actions taken by the Department of the Interior or

7 BIA?

8 A. No, sir, no actions by the Department of

9 Interior or BIA.

10 Q. And then the last is, "prevent the use

11 of Corps-managed lands as a camp, base, or staging

12 area from which potential -- potentially dangerous or

13 unlawful activities may have been conducted on or off

14 Corps-managed lands." Any actions taken by the

15 Department of the Interior or BIA in that regard?

16 A. No, sir, no actions by DOI or BIA.

17 Q. I want to talk to you about 14. This is

18 "Any requests" -- "Any requests made by the United --

19 by the U.S. for assistance from State or local

20 authorities to remove persons from Corps-managed land

21 or to deal with the actions of persons on or off

22 Corps-managed land."

23 Are you aware of any such requests made

24 by the United States for assistance from State and

25 local authorities to do those activities?

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1 A. Paul, I do recall a communication, I

2 believe, from Corps of Engineers to the State.

3 However, I don't have that in front of me, and I

4 believe it was -- I don't believe it was necessarily a

5 request for assistance as much as it was just

6 identifying that the State did have jurisdiction in a

7 trespass situation.

8 But as I was not part of what the

9 Department of Interior would normally be involved in,

10 other than briefly seeing the document, that I -- I

11 just recall something likely exists in some of the

12 materials that I reviewed.

13 Q. Okay. But nothing specific to the

14 Department of the Interior, the Department -- or,

15 excuse me, of -- or Bureau of Indian Affairs?

16 A. No, sir. DOI did not make any requests

17 for assistance from State or local authorities to

18 remove persons from Corps-managed lands.

19 Q. Okay. I want to talk to you a little

20 bit about 15. "Communications between the

21 United States and with, to, or from persons on

22 Corps-managed lands related to the DAPL protests, or

23 representatives or spokespersons for such persons."

24 There's -- there's a number of -- I'm

25 sure there's a number of communications that occurred.

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74 to 77

<p style="text-align: right;">Page 74</p> <p>1 I have a couple of exhibits I would like to -- to go</p> <p>2 over with you that I think will kind of focus the</p> <p>3 questions I have.</p> <p>4 Let me start with DOI 11791. I believe</p> <p>5 we're up to 837, so this will be Exhibit 837.</p> <p>6 (Deposition Exhibit 837 was remotely</p> <p>7 introduced.)</p> <p>8 Q. Are you familiar with who Rosa Salamanca</p> <p>9 is?</p> <p>10 A. I did not recall her name until I was</p> <p>11 reviewing that portion of Darren Cruzan's deposition,</p> <p>12 and that refreshed my memory. I -- I still don't</p> <p>13 recall having much interaction with her.</p> <p>14 Q. Okay. She sent an email on the 23rd of</p> <p>15 February [sic] that's up on the screen right now.</p> <p>16 "North Camp leadership has stepped forward to ask for</p> <p>17 a problem-solving dialogue regarding specific concerns</p> <p>18 about their camp. General Dohrmann and Colonel</p> <p>19 Gerhart have indicated a willingness to attend. Would</p> <p>20 BIA and the Sheriff's Office be interested in</p> <p>21 attending -- in attending the meeting?"</p> <p>22 Would -- okay. Well, and I guess what</p> <p>23 I'm trying to understand is why Rosa -- how Rosa</p> <p>24 Salamanca gets involved from the Department of Justice</p> <p>25 rather than, I guess, BIA. I mean, isn't this the</p>	<p style="text-align: right;">Page 76</p> <p>1 Do you recall attending such a dialogue</p> <p>2 session, or whatever it was referred to, meeting?</p> <p>3 A. I do not. I do not believe such a</p> <p>4 meeting occurred.</p> <p>5 Q. Okay. So you expressed availability,</p> <p>6 but then, I guess, it never actually went forward?</p> <p>7 A. That -- that is correct, not to my</p> <p>8 recollection.</p> <p>9 Q. Okay. Okay. The next one I would like</p> <p>10 to talk to you about, it's DOI 11084. And this is now</p> <p>11 going to be Exhibit -- where is that running list --</p> <p>12 eight thirty- -- so we're at 838.</p> <p>13 (Deposition Exhibit 838 was remotely</p> <p>14 introduced.)</p> <p>15 Q. And this is an email chain in</p> <p>16 February of 2017. I want to go to the last page, so</p> <p>17 it would be the earliest email in the thread.</p> <p>18 You know, I think we need to see who it</p> <p>19 came from as well, because I believe it's from Justin</p> <p>20 Wendland. It looks like he's at BIA. Do you know who</p> <p>21 he is?</p> <p>22 A. Yes, sir. Justin was a law enforcement</p> <p>23 officer for BIA.</p> <p>24 Q. Okay. And then you're on this email, as</p> <p>25 well as a number of other individuals from BIA. It</p>
<p style="text-align: right;">Page 75</p> <p>1 type of thing that BIA would typically do when it's</p> <p>2 communicating with tribal members and related issues?</p> <p>3 MR. JAFEEK: Objection, calls -- calls</p> <p>4 for speculation, and the question is vague and</p> <p>5 ambiguous. But you can answer.</p> <p>6 A. So, Paul, I think, as we found</p> <p>7 throughout this -- this event, a number of the</p> <p>8 individuals were not tribal, and -- and the BIA did</p> <p>9 not have an office similar to the office that Rosa was</p> <p>10 from. And as, you know, this was Corps of Engineers</p> <p>11 property, DOJ was -- was probably assisting, my</p> <p>12 assumption is, because the Corps of Engineers also</p> <p>13 didn't have an office similar to that.</p> <p>14 Q. (BY MR. KERLIN) Okay. Do you recall --</p> <p>15 if we go to the top, that first email.</p> <p>16 Well, I guess I did skip one. We have</p> <p>17 Rosa -- the one that was just up. "Rosa, I may not be</p> <p>18 back in time, but I have cc'd DADs' McClure and</p> <p>19 O'Neal." So that one might be referring to you.</p> <p>20 A. Yes, sir.</p> <p>21 Q. So then -- then we go back to the first</p> <p>22 page -- there we go -- Friday, September 23 of 2016.</p> <p>23 And you sent an email that said, "Hi Rosa, I'll be</p> <p>24 getting up to speed on Monday and in the area the</p> <p>25 remainder of the week. I can attend."</p>	<p style="text-align: right;">Page 77</p> <p>1 says, "Good Morning, Just a heads up... Chief and I</p> <p>2 met with and served LaDonna Allard the BIA notice of</p> <p>3 trespass and violation paper regarding the land area</p> <p>4 identified as Sacred Stone." Do you know what</p> <p>5 Mr. Wendland is referring to when he talks about the</p> <p>6 BIA notice of trespass violation paper?</p> <p>7 A. Vaguely, yeah. I do recall reviewing</p> <p>8 a -- a trespass notice that I believe was put together</p> <p>9 by the BIA's regional office regarding an unauthorized</p> <p>10 use of reservation land in the area.</p> <p>11 Q. Okay. And in your experience, so --</p> <p>12 with BIA, is that something that -- so who -- I guess</p> <p>13 what I'm saying is, for this type of notice of</p> <p>14 trespass, have you been involved in one of these</p> <p>15 notice of trespass violations on other occasions?</p> <p>16 A. I -- I have not. And trespass,</p> <p>17 particularly on the reservation with the complex</p> <p>18 jurisdictional matrix throughout the United States,</p> <p>19 trespass is a very difficult issue, and I did not prep</p> <p>20 for this deposition specifically to talk about</p> <p>21 trespass in this situation. I apologize.</p> <p>22 Q. Okay. Yeah, it's just -- it's one of</p> <p>23 the communications with the -- with the individuals.</p> <p>24 I guess if we can turn -- let's also --</p> <p>25 we're going to go to what I think might be the letter</p>

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<p style="text-align: right;">Page 78</p> <p>1 you're referring to. It's DOI 11686. We'll mark that 2 as 839.</p> <p>3 (Deposition Exhibit 839 was remotely 4 introduced.)</p> <p>5 Q. It's an email from you, and it says 6 "Monty" -- this is March 21, 2017. "Monty, With Dave 7 Armstrong's initial opinion being the property is 8 Indian Country under 18 U.S.C. 1161 I'm looping in 9 Darren Cruzan to shed some light on how they went 10 about getting eviction/trespass notices issued through 11 the BIA realty as, dependent on upon the tribe's 12 wishes, this may be of interest to the tribe as a 13 route to pursue before the camps grow any larger. I'm 14 attaching one of the letters from DAPL that BIA issued 15 for reference."</p> <p>16 What I would like to do is flip to -- 17 it's a number of pages down. Let's see, one, two -- 18 well, it's -- in the corner it's Bates-labeled 11698, 19 and it's got -- it's on the letterhead of the 20 United States Department of the Interior.</p> <p>21 This is the attachment to your email. 22 Is this the -- the notice of trespass that would have 23 been related to the DAPL protest that you were 24 referring to in the other exhibit we looked at, 25 Exhibit 838?</p>	<p style="text-align: right;">Page 80</p> <p>1 A. That is correct.</p> <p>2 Q. Okay. If we go down three -- it's the 3 last full paragraph on this page. It says, "An Indian 4 owning a beneficial interest in trust property may 5 still be held liable for trespass on that property." 6 And then there's a quote: "It is well-established 7 that one who commands, instigates, encourages, 8 advises, countenances, cooperates in, aids, or abets 9 the commission of a trespass is liable as a 10 co-trespasser with the person actually committing the 11 trespass, and is liable as a principal to the 12 statement extent and in the same manner as if he had 13 performed the wrongful act himself." Do you see that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. So this letter is informing DAPL 16 protesters, if they come onto and did, in fact, come 17 onto Standing Rock Reservation land, that they are 18 trespassing, and informing them of the potential 19 consequences of being in trespass. And then on the 20 next page there's a whole litany of the different 21 damages and consequences of doing so.</p> <p>22 Do you recall that this was given to 23 Ms. LaDonna Allard?</p> <p>24 MR. JAF EK: I would object to the 25 question as vague and ambiguous. Specifically it's --</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Yes, sir, that's correct.</p> <p>2 Q. Okay. And in that first sentence it 3 says, "It has come to our attention that you are 4 allowing individuals to move onto trust property 5 without proper authorization or without a valid lease. 6 This notice is being issued to you regarding a 7 possible trespass violation for utilizing trust 8 property without approved authorization or a valid 9 lease contract."</p> <p>10 So this is telling them that they are 11 trespassing because they don't have a valid lease 12 contract, right?</p> <p>13 MR. JAF EK: And I would object that this 14 goes beyond the scope of the notice. But you can 15 answer in your personal capacity.</p> <p>16 A. And I apologize, Paul, can you repeat 17 your question?</p> <p>18 Q. (BY MR. KERLIN) Sure. That this is the 19 notice -- I mean, it says the sentence, "This notice 20 is being issued to you regarding a possible trespass 21 violation for utilizing trust property without 22 approved authorization or a valid lease contract." 23 So since they didn't have authorization, 24 they didn't have a lease contract, this notice of 25 trespass was being issued to them, right?</p>	<p style="text-align: right;">Page 81</p> <p>1 it's compound as to that last question, as to whether 2 it was given to Ms. Allard. I don't -- I would only 3 object to that on the basis that it goes beyond the 4 scope of the notice. And you can answer in your 5 personal capacity.</p> <p>6 A. So, Paul, I'm unaware that Ms. Allard 7 would have received a similar copy of this trespass 8 notice as this one, I believe, was addressed to -- to 9 someone else.</p> <p>10 But I think these likely would have only 11 gone to tribal members that were residing there. It 12 was not my understanding they were going to 13 protesters.</p> <p>14 Q. (BY MR. KERLIN) I see. So it was going 15 to the tribal members because the tribal members were 16 allowing or encouraging individuals to then camp or 17 occupy the Standing Rock Indian Reservation without 18 permission or a lease; is that right?</p> <p>19 MR. JAF EK: Objection, it goes beyond 20 the scope of the notice. But you can answer in your 21 personal capacity.</p> <p>22 A. I -- I do not know, Paul.</p> <p>23 Q. (BY MR. KERLIN) Okay. So it's -- but 24 it's going to tribal members, I believe is what you 25 said. They would have been directed to tribal</p>

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82 to 85

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1 members. Okay.

2 A. And if I could add one point of

3 clarification to that. My assumption is it would have

4 went to people that were tribal members living on the

5 reservation, as I -- I don't believe we had

6 information as far as who the protesters were, names,

7 for instance, to issue such a notice to -- to

8 individual people that were not landowners or

9 occupiers there.

10 Q. I see. And so it would be directed to

11 those that might be instigating, encouraging,

12 advising, or cooperating or aiding others in

13 trespassing on the land, like the tribal members?

14 A. That is correct.

15 Q. Okay. A couple more here. DOI 26858

16 will be the next one.

17 (Deposition Exhibit 840 was remotely

18 introduced.)

19 Q. Okay. This is an email that was sent --

20 it looks like it was sent to you, and then you

21 responded to it, although I don't see the -- everyone

22 on the forward email as to who it went to.

23 If we go down to the first one in time,

24 or the earliest, you know, January 26, "Update of

25 today's events." The first -- and I'm just going to

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1 read the first sentence, in the interest of time.

2 "The state is not going to set checkpoints on the

3 reservation."

4 The second is, "The state is planning to

5 start the process to open up the bridge as early as

6 tomorrow." It goes through that.

7 And then the third one, it says, "The

8 Corps of Engineers have not issued an eviction notice

9 at this time." Do you see that?

10 A. Yes, sir.

11 Q. And then it says, "They are attempting

12 to have DOJ write the eviction notice and have the

13 U.S. Attorney sign it. The Corps has a contract in

14 place to have anything left behind by protesters

15 removed from the site."

16 Did the Department of the Interior know

17 that the Corps of Engineers had not issued an eviction

18 notice to the protesters for those that were on Corps

19 land as of January 26, 2017?

20 A. I'm sorry, Paul. I'm a little bit

21 confused. I can't see the date of this email again.

22 But you're -- you're asking -- so you're

23 saying that Mathis sent this, notifying that they --

24 that there hasn't been an eviction notice yet, and

25 you're asking if the Department -- can you ask your

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1 question one more time?

2 Q. Sure, sure. It's just that, you know,

3 what this says that was updating as of today's events,

4 if we can get the date -- there it is, January 26,

5 2017, that as of that date, the Corps of Engineers had

6 not issued an -- an eviction notice at this time for

7 those protesters on Corps-managed land, and Department

8 of Interior was aware of that.

9 A. Yes. Based on this email, the

10 Department would have been aware, correct.

11 Q. Okay. And your email on the top of this

12 then says, "Thank you sir. Thanks, Jason O'Neal."

13 A. Yes, sir, that's correct.

14 Q. Okay. All right. I want to go to the

15 next one. It's DOI 19811 [sic]. Okay. We're still

16 pulling that one up. And we'll mark that as

17 Exhibit 841.

18 MR. DIAZ: I'm sorry. Did you say

19 19811?

20 MR. KERLIN: No.

21 MR. DIAZ: I only have 10.

22 MR. KERLIN: That's it, 10. I'm sorry.

23 I was looking at the second page.

24 MR. DIAZ: Oh, okay. Okay. Got it.

25 (Deposition Exhibit 841 was remotely

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1 introduced.)

2 Q. (BY MR. KERLIN) Okay. Let's -- I think

3 the best way to do this -- I guess that we'll go to

4 the -- let's go to the press release. Yeah, we'll

5 work our way up from the last page.

6 So there's this press release, and it

7 looks like, if we go to the prior page, it's on a

8 distribution of some sort. Are you familiar with the

9 as-ia_opa@bia.gov distribution?

10 A. I don't recall what OPA stood for.

11 Q. Okay. Well, but, I mean, is that

12 something that -- I'm just trying to understand if

13 it's kind of like disseminated from -- oh, okay.

14 Well, it looks like --

15 A. I think that's probably like public

16 affairs, maybe.

17 Q. But is that something that goes out

18 to -- that you would typically receive?

19 A. I don't believe so. It looks like this

20 has been forwarded, kind of, a couple times. So, you

21 know, if it's -- if it's a news release, sometimes

22 those -- like if it came out from the Assistant

23 Secretary's office, sometimes those would go to all

24 Indian Affairs employees. If it's a news release

25 coming out at the department level, sometimes those

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401-402

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86 to 89

<p style="text-align: right;">Page 86</p> <p>1 would go out to all department employees.</p> <p>2 I -- this appears to be a news release</p> <p>3 from the Assistant Secretary of Indian Affairs, so</p> <p>4 that may or may not have gone out to all BIA and BIE</p> <p>5 employees.</p> <p>6 Q. Okay. Can we go to the release, and</p> <p>7 then we'll come back to that -- that first email. So</p> <p>8 the release in its -- "For Immediate Release,</p> <p>9 February 3, 2017." The "Acting Assistant Secretary</p> <p>10 Michael Black on the Standing Rock Sioux Tribe and BIA</p> <p>11 Law Enforcement Assistance."</p> <p>12 It starts off and says, "The Bureau of</p> <p>13 Indian Affairs today responded to the Standing Rock</p> <p>14 Sioux Tribe's request for BIA law enforcement support</p> <p>15 and will assist them in closing the protest camps</p> <p>16 within the Standing Rock Reservation boundary."</p> <p>17 We looked at a document earlier that I</p> <p>18 think we marked as -- where did I put it? -- well, it</p> <p>19 was Operation Cannonball. Do you remember that, when</p> <p>20 we were talking about that earlier?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So there's the press release, and</p> <p>23 then that's dated a little bit later. Is that what</p> <p>24 was formulated in response to what the directive is</p> <p>25 here from the assistant acting secretary?</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. Okay. Let me pull up 10611. We'll make</p> <p>2 it 842.</p> <p>3 (Deposition Exhibit 842 was remotely</p> <p>4 introduced.)</p> <p>5 Q. Okay. If we go to the second email in</p> <p>6 this, it's an email chain, but we don't have it up</p> <p>7 yet. There we go.</p> <p>8 It says, from Mar- -- excuse me, Marcia</p> <p>9 Good. "I've lost my copy of the January 1981 memo</p> <p>10 between BIA and FBI on responding to civil disorder</p> <p>11 in," it says, "IC . . . can either of you send me a</p> <p>12 copy? Thanks, m."</p> <p>13 And if we go to the front page, you then</p> <p>14 say, "Hi Marcia. It's attached... Thanks Darren."</p> <p>15 Oh, "It's attached... Thanks Darren," and then</p> <p>16 "Thanks."</p> <p>17 Okay. And if we go to the third page,</p> <p>18 we can look at the PDF, the attachment. Have you seen</p> <p>19 this document before?</p> <p>20 A. Yes, sir, I have.</p> <p>21 Q. Okay. So it -- it's a -- I mean, it's a</p> <p>22 memo, it appears to be -- or could you tell me what it</p> <p>23 is? Let's -- let's go with it that way.</p> <p>24 A. Yeah. I believe it's an MOU between the</p> <p>25 Department of Justice and the Department of Interior</p>
<p style="text-align: right;">Page 87</p> <p>1 A. And I apologize, Paul. What -- what</p> <p>2 directive are you referring to?</p> <p>3 Q. Well, I'm just referring to, I guess,</p> <p>4 this public statement. I'm calling it a directive,</p> <p>5 but it seems like -- well, I guess he's just saying</p> <p>6 that the Bureau of Indian Affairs responded to their</p> <p>7 request, so that there is some action being taken by</p> <p>8 BIA for law enforcement support for closing protest</p> <p>9 camps, but it's clear that, I mean, what he says is</p> <p>10 "within the Standing Rock Reservation boundary."</p> <p>11 A. That -- that's correct. This more than</p> <p>12 likely reflects the Operation Cannonball that we had</p> <p>13 looked at earlier.</p> <p>14 Q. Yeah. I think we marked it 832, just</p> <p>15 for the record. But okay. Got it.</p> <p>16 On the top of this, the top email, it</p> <p>17 says -- it's an email from you, and it's Friday,</p> <p>18 February 3. It says, "Wow, she is really reading into</p> <p>19 it." Do you know what you were referring to?</p> <p>20 A. No, I don't. And it's kind of odd that</p> <p>21 there's not any more in the email chain, so perhaps</p> <p>22 Darren and I were on a -- on a phone call together and</p> <p>23 some comments were made and I sent him a -- a message</p> <p>24 through email, but I -- I don't recall why I would</p> <p>25 have wrote that.</p>	<p style="text-align: right;">Page 89</p> <p>1 regarding any federal response to civil disorder on</p> <p>2 Indian reservations. And specifically, you know, the</p> <p>3 support that DOJ could provide to the Department of</p> <p>4 Interior for on-reservation disorder control.</p> <p>5 Q. Okay. So if we go to page -- we're</p> <p>6 going to go to the one -- it's the third page of this</p> <p>7 memo, and it -- that second full paragraph says,</p> <p>8 "Whenever" -- it starts "Whenever." "Whenever any</p> <p>9 civil disorder reaches a point beyond the control</p> <p>10 capabilities of local and Bureau of Indian Affairs</p> <p>11 resources, the Department of the Interior may elect to</p> <p>12 request assistance from the Department of Justice."</p> <p>13 Do you see that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Is that what you're referring to about</p> <p>16 the Department of the Interior can request assistance</p> <p>17 from the Department of Justice?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Do you know if any such request was made</p> <p>20 in this situation, so with respect to the DAPL protest</p> <p>21 response, any request by the Department of the</p> <p>22 Interior for assistance from the Department of</p> <p>23 Justice?</p> <p>24 A. No, sir, there were no requests made</p> <p>25 from DOI to DOJ for assistance under this MOU.</p>

88:3-20
401-402;
61189:19-
25
401-
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90 to 93

90:5-91:3
401-402; 602

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1 Q. Thank you. That's all I have for that
2 one. And I think I have one more.
3 It's going to be DOI 11094. I think
4 that's going to be 843.
5 (Deposition Exhibit 843 was remotely
6 introduced.)
7 Q. Do you recall that there was an
8 executive order issued by Governor Burgum in -- and
9 this would have been in February of 26 -- excuse me,
10 2017? It was an evacuation order?
11 A. Yes, sir, I do recall this.
12 Q. Okay. It says, if we go to the third
13 paragraph in a letter issued February 3, "the Corps
14 also ordered those camping on federal property to
15 vacate to prevent injuries and significant
16 environmental damage in the likely event of flooding
17 in the area."
18 I -- I guess my question is, is -- this
19 isn't about vacating Standing Rock Indian Reservation
20 land, right? I mean, this is about Corps-managed land
21 being vacated?
22 A. That -- that's correct, Paul. My -- my
23 assumption, because Barry would have been our program
24 analyst sharing information to us received from the
25 State, that this would be information that he -- he

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1 received through part of that joint information
2 sharing. And he -- so he would be briefing this back
3 to DOI leadership that was coming from the State.
4 Q. Okay. And -- and it's not so much that
5 BIA -- that makes sense, and I appreciate that answer.
6 And I guess just to understand it, it's
7 along the same lines that you had testified earlier:
8 That BIA was monitoring what's going on, and then it's
9 not that you were necessarily going to be taking any
10 specific actions for the Corps-managed land to address
11 environmental or helping evacuate or remove those
12 individuals that were on Corps-managed land; it's more
13 of BIA keeping a -- kind of a situational awareness.
14 And then later we look at some of the documents --
15 or that, you know, you were working in tandem with
16 this about the Operation Cannonball, about how it may
17 affect Standing Rock Reservation land. Do I kind of
18 have that correct?
19 A. Yes, sir, that is correct.
20 MR. KERLIN: Okay. Okay. Let's do
21 this. Can we take a five-minute break? We can kind
22 of keep it a short one. I understand -- well, let's
23 go off the record, if that's okay.
24 THE VIDEOGRAPHER: Going off the record.
25 The time is 6:19 p.m. UTC, 11:19 a.m. Mountain.

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1 (Recess taken 11:19 a.m. to 11:27 a.m.
2 Mountain Standard Time.)
3 THE VIDEOGRAPHER: We're back on the
4 record. The time is 6:27 p.m. UTC, 11:27 a.m.
5 Mountain.
6 Q. (BY MR. KERLIN) Mr. O'Neal, we're back
7 after a short break. Able to continue?
8 A. Yes, sir.
9 Q. Anything else that you need to add to
10 the testimony you've already given or -- or change?
11 A. No, sir.
12 Q. Okay. I would like to pull up DOI 9144.
13 Mark this as Exhibit 844.
14 (Deposition Exhibit 844 was remotely
15 introduced.)
16 Q. It's an email chain. So let's go to the
17 second email first, and then it's -- it's one that you
18 received, and then you have a response to.
19 Okay. So the subject of this is
20 "ESF-13: Preemptive preparations for Hurricane
21 Matthew." And it's a -- it's from a, looks like,
22 Candace Shea at DOI. "Good afternoon, As you are
23 likely aware, Hurricane Matthew is now a Category 4
24 storm, currently located approximately 220 miles
25 south/southeast of Kingston, Jamaica. Several

92:14-94:12
401-402;
611

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1 forecasted tracks show Matthew as having a significant
2 impact on the eastern seaboard of the United States by
3 this weekend.
4 "Due to the projected impact of the
5 storm, and the potential for 'worse-case scenario' of
6 a landfall by this weekend, the ATF has asked all
7 ESF-13 stakeholders to begin searching their ranks for
8 deployable Federal LEOs. This is a preparatory
9 measure; there is no activation at this time."
10 Then it says, "Please provide me with an
11 estimated number of LEOs your Bureau may be able to
12 commit NLT COB Wednesday, October 5." I think NLT
13 means "no later than" and COB means "close of
14 business."
15 But my question for you is, does -- does
16 the Department of the Interior receive these at
17 different times about a request for availability of
18 law enforcement support?
19 MR. JAFEK: Objection, it goes beyond
20 the scope of the notice. But you can answer in your
21 personal capacity.
22 A. Yes, sir. ESF stands for Emergency
23 Support Function 13, which is the federal government's
24 law enforcement response. That's managed by ATF.
25 Anytime there's a potential ESF

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94 to 97

<p style="text-align: right;">Page 94</p> <p>1 deployment, the ATF will reach out to all federal law</p> <p>2 enforcement agencies to begin preplanning for</p> <p>3 available law enforcement officers for those</p> <p>4 disasters. And that is something the department</p> <p>5 receives very often.</p> <p>6 Q. (BY MR. KERLIN) Okay. Do you know if</p> <p>7 there was any such ESF-13 that was issued -- I don't</p> <p>8 know if that's the right word, or "put out" is maybe a</p> <p>9 different way to say it -- with respect to the DAPL</p> <p>10 protests?</p> <p>11 A. No, sir. There was no ESF-13 request</p> <p>12 for DAPL.</p> <p>13 Q. Okay. And just so that I understand</p> <p>14 ESF-13, if that did go out, then that would have been</p> <p>15 to all federal agencies to see who was available? Or</p> <p>16 is that just limited to DOI?</p> <p>17 MR. JAFEK: Objection, goes beyond the</p> <p>18 scope of the notice. But you can answer in your</p> <p>19 personal capacity.</p> <p>20 A. All A- -- ATF is the SME for that</p> <p>21 ESF-13, so that would be a question for DOJ.</p> <p>22 Q. (BY MR. KERLIN) Okay. Sounds good.</p> <p>23 So then if we go to the top email --</p> <p>24 well, there's one that says, "Can we support this?" at</p> <p>25 the very bottom of that page -- or the top of that</p>	<p style="text-align: right;">Page 96</p> <p>1 is a long chain, and so I'm going to try and get</p> <p>2 through it relatively quickly.</p> <p>3 But let's go to the last page, and we'll</p> <p>4 work our way up ultimately to your email.</p> <p>5 It says -- December 9, the one I see, it</p> <p>6 says, "Francis, We would like to schedule a meeting</p> <p>7 with Secretary -- with the Secretary to acknowledge</p> <p>8 the work of BIA Officers at Standing Rock. My sense</p> <p>9 is that there will be about 10 officers that will be</p> <p>10 invited to attend. Can you please let us know</p> <p>11 available dates and times?"</p> <p>12 We will work our way up. "Best</p> <p>13 times" -- excuse me. "Best dates to make this happen</p> <p>14 are January 6 and 13. Please let me know if you'd</p> <p>15 like us to hold some time."</p> <p>16 We go on up to the next one. "Great.</p> <p>17 Thank you. Let's target January 6th for a meeting</p> <p>18 with the OJS team. Do you need a list of names from</p> <p>19 Darren?"</p> <p>20 Your response is, "Yes." I don't know</p> <p>21 if you can see that. That was actually on the -- just</p> <p>22 underneath it. "Yes."</p> <p>23 A. Yes.</p> <p>24 Q. And then if we go -- if we come up to</p> <p>25 the prior page, "Mr. Roberts, Below are the names of</p>
<p style="text-align: right;">Page 95</p> <p>1 page.</p> <p>2 And then your response at the top, it</p> <p>3 said, "No, we wouldn't."</p> <p>4 Well, I guess the first -- what you send</p> <p>5 is, "Would we need to support a full 25-man team? If</p> <p>6 so, probably not with the DAPL protest operation."</p> <p>7 And then the response above that, "No,</p> <p>8 we would not. The smallest element is a 5-man squad.</p> <p>9 They would accept one or two squads, if we could field</p> <p>10 them."</p> <p>11 So in response to this ESF-13, I guess</p> <p>12 BIA didn't have the resources to be able to try and</p> <p>13 commit someone, or at least is that what -- what</p> <p>14 you're indicating in your email?</p> <p>15 A. That's correct, Paul. As I indicated</p> <p>16 earlier, nationwide and historically, we've been -- or</p> <p>17 the BIA has always been short-staffed. And just</p> <p>18 getting the detail of this number of people to the</p> <p>19 Standing Rock Sioux Reservation was already a major</p> <p>20 impact on our resources nationwide.</p> <p>21 Q. Okay. If we could look at DOI 13061.</p> <p>22 And this will be 845.</p> <p>23 (Deposition Exhibit 845 was remotely</p> <p>24 introduced.)</p> <p>25 Q. I want to -- there's a number of -- this</p>	<p style="text-align: right;">Page 97</p> <p>1 the folks we recommend we bring in to meet with the</p> <p>2 Secretary on the 6th. It's difficult to name just a</p> <p>3 few because so many have performed extraordinarily</p> <p>4 well."</p> <p>5 There's a number of BIA individuals.</p> <p>6 Are these all individuals that were involved in the</p> <p>7 DAPL protest response on behalf of the BIA?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Is that first one, for BIA Special Agent</p> <p>10 in Charge William "Bill" McClure, is that the -- it</p> <p>11 says "Rifle Incident." Was that the discharge of the</p> <p>12 firearm that you mentioned?</p> <p>13 A. Yes, sir, it was.</p> <p>14 Q. Okay. And then if we go down to the</p> <p>15 fourth, it's BIA Police Officer Brian Clouston, the</p> <p>16 "individual driving a stolen car sped into the camp</p> <p>17 and crashed into a tipi." Was that the other incident</p> <p>18 you were -- you had mentioned about starting on</p> <p>19 reservation land and then ending up on Corps land?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Got it. Okay. And then if we go back</p> <p>22 another email, it's -- it's, I believe, to you and to</p> <p>23 Bill. "Narrowed down list" to meet with the</p> <p>24 Secretary. It's directed to you.</p> <p>25 And then if we go to the top --</p>

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<p style="text-align: right;">Page 98</p> <p>1 Oh, I'm sorry. I've skipped one. I'm</p> <p>2 sorry. I -- I left off one important detail. The</p> <p>3 second sentence says, "Can you guys please see to it</p> <p>4 that these guys are notified, and make travel</p> <p>5 arrangements to be here [by] Friday, January 6, for a</p> <p>6 10:00 a.m. to 11:00 a.m. meeting with Secretary Sally</p> <p>7 Jewell and other DOI leadership."</p> <p>8 And now we go to the top email, which is</p> <p>9 from you. And it says, "Absolutely, I am certain they</p> <p>10 will be excited and honored to be recognized."</p> <p>11 Did -- did this meeting occur?</p> <p>12 A. I don't recall, Paul. I know it wasn't</p> <p>13 a meeting that I participated in, and I don't recall</p> <p>14 whether or not it happened or not.</p> <p>15 Q. Okay. And that was going to be my next</p> <p>16 question, did you participate in the meeting or attend</p> <p>17 it. It sounds like you didn't.</p> <p>18 A. No, sir.</p> <p>19 Q. Okay. Now, I guess the reason why I</p> <p>20 found it --</p> <p>21 Well, let me just put it this way: The</p> <p>22 protests weren't over in -- I mean, this is</p> <p>23 December 22 of 2016. The protests didn't conclude for</p> <p>24 another month, month and a half, right?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 100</p> <p>1 introduced.)</p> <p>2 Q. So Justin Wendland forwards a -- a link.</p> <p>3 It says, "This release just came out a couple hours</p> <p>4 ago..." And the title of the link is "BIA to provide</p> <p>5 more officers to assist Standing Rock Sioux Tribe in</p> <p>6 closing protest camps on tribe land."</p> <p>7 I think we looked at that press release</p> <p>8 from the Assistant Secretary, but my question is about</p> <p>9 your response to it. And this is February 3, 2017.</p> <p>10 "Thanks Justin, have you or anyone from the EOC seen</p> <p>11 or corresponded with Heidi lately? This is new info</p> <p>12 for me." Do you know who Heidi is?</p> <p>13 A. I do not.</p> <p>14 Q. Okay. And then also, the cc on this --</p> <p>15 well, strike that.</p> <p>16 Do you know what EOC stands for?</p> <p>17 A. Typically, that would stand for</p> <p>18 emergency operations center, which I'm assuming would</p> <p>19 be the State, but that's just a guess.</p> <p>20 Q. Okay. Got it. Sounds good.</p> <p>21 Let's go to DOI 11645. Mark this as</p> <p>22 847.</p> <p>23 (Deposition Exhibit 847 was remotely</p> <p>24 introduced.)</p> <p>25 Q. This is a -- this is a forward of an</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. I mean, did it seem a little premature</p> <p>2 to be kind of, I guess, celebrating or being</p> <p>3 recognized before the protest response was concluded?</p> <p>4 MR. JAFEK: Objection, goes beyond the</p> <p>5 notice -- it goes beyond the scope of the notice. But</p> <p>6 you can answer in your personal capacity.</p> <p>7 A. I -- I don't know, Paul.</p> <p>8 Q. (BY MR. KERLIN) Okay. I mean -- okay.</p> <p>9 It just seems like you might want to wait until the</p> <p>10 whole thing is done. I didn't know if perhaps it had</p> <p>11 to do with the fact that Secretary Jewell would likely</p> <p>12 be leaving the Department of the Interior with the</p> <p>13 change of administrations. Any knowledge about that</p> <p>14 one way or another?</p> <p>15 MR. JAFEK: The same objection. You can</p> <p>16 answer in your personal capacity.</p> <p>17 A. Paul, I can only assume from the BIA</p> <p>18 side that, you know, it's seldom that any of our folks</p> <p>19 in the field would have an opportunity to meet with a</p> <p>20 Secretary, and so that was likely what was driving our</p> <p>21 trying to make it happen. But beyond that, I don't</p> <p>22 know.</p> <p>23 Q. (BY MR. KERLIN) Okay. Could we pull up</p> <p>24 DOI 19770. Okay. We'll mark this as Exhibit 846.</p> <p>25 (Deposition Exhibit 846 was remotely</p>	<p style="text-align: right;">Page 101</p> <p>1 email that I think you received, but it could have</p> <p>2 been forwarded to you. It's from -- no, actually, I</p> <p>3 think it went to Justin Wendland and then to you.</p> <p>4 If we go to the start of the email</p> <p>5 that's on the screen right now, so if we go up maybe</p> <p>6 one more page. Okay. Perfect.</p> <p>7 So this is an email from Justin</p> <p>8 Wendland, March 14, 2017. "FYI... not sure how many</p> <p>9 of you are on the green team listing but just in case,</p> <p>10 please do your part in this survey if you have</p> <p>11 anything to add. I too believe we," in parenthesis,</p> <p>12 "(BIA) need to complete some type of debrief or an</p> <p>13 after-action report," in parenthesis, "(probably not</p> <p>14 as engaged or in-depth as the state's) in order to</p> <p>15 better our next response by reviewing how this entire</p> <p>16 operation from start to finish went including lessons</p> <p>17 learned and how we can formulate a better more</p> <p>18 efficient response in the next event.</p> <p>19 "Please forward to anyone I have missed</p> <p>20 in BIA and those in DOI that may have ended up on the</p> <p>21 ground here Thank you."</p> <p>22 Do you -- and it's a forward of Sean</p> <p>23 Johnson. It's a -- the title of his email is "DAPL</p> <p>24 Unlawful Protest Response After Action Review," and</p> <p>25 "https://surveymonkey.com" for a survey that was set</p>

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1 up on SurveyMonkey, which is a website.

2 And then this goes to you, if we go up a

3 page. "Thanks, Justin, do you know who is championing

4 this effort from the state? I would love to get a

5 copy of both their questions and responses."

6 Do you recall if you completed the --

7 the online after-action review SurveyMonkey that was

8 set up by Sean Johnson on behalf of the Department of

9 Emergency Services for North Dakota?

10 A. No, sir, I -- I don't believe I would

11 have.

12 Q. Did either the Department of the

13 Interior or BIA do any type of after-action review or

14 kind of after it's -- its resolved, any type of

15 look-back to see areas for improvement or things of

16 that nature with respect to the DAPL protest response?

17 A. There was an after-action review of the

18 Operation Cannonball response.

19 Q. Okay. And was that it?

20 A. Yes, sir. I believe that's the only

21 after-action review that was conducted.

22 Q. Do you happen to take place [sic] in the

23 after-action review or the -- I'm trying to think of

24 how to describe this. There was a meeting of

25 North Dakota law enforcement individuals that

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1 responded to discuss it. Did you attend anything like

2 that with respect to North Dakota law enforcement?

3 A. No, sir, I did not.

4 Q. Okay. Okay. I want to talk about a

5 couple other topics. I think we left off -- if we go

6 back to 80- -- 803. I want to pick up at topic 16.

7 "Enforcement actions or investigations taken by the

8 U.S.A. . . . at any time with respect to any of the

9 persons on Corps-managed land who were associated with

10 the DAPL protests."

11 Any enforcement actions or

12 investigations taken by DOI or BIA with respect to any

13 of the persons on Corps-managed lands who were

14 associated with the DAPL protests?

15 A. No, sir, outside of the two responses

16 that I had indicated where we had law enforcement

17 officers respond. I don't consider either of those

18 to -- to fit the definition of an enforcement action

19 or an investigation by the department regarding the

20 persons on Corps-managed lands.

21 Q. Okay. I want to talk to you about

22 topic 20. "Decisions by U.S.A. to provide or withhold

23 law enforcement assistance to State and local

24 authorities during the DAPL protests."

25 Any law enforcement assistance that was

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1 withheld to State and local authorities by the

2 Department of the Interior or BIA during the DAPL

3 protests?

4 A. All through all the research, we could

5 only identify one incident, and that had to do with

6 closure of the highway at the request of the State on

7 one particular date. And the information I reviewed

8 at the time, Darren Cruzan, on-site, declined to close

9 the highway. And that was the only withholding of

10 assistance that I could identify through my research.

11 Q. Okay. Just to talk about that one a

12 little bit, what was the rationale for not closing the

13 highway at the request of State and local?

14 A. In -- in the materials I reviewed, it

15 cited jurisdictional operational concerns. I am

16 unsure of the request itself, but at least from the

17 information I reviewed, it had the appearance that the

18 requested closure was off the reservation.

19 Q. And is that the only request that you're

20 aware of that was made by local law enforcement, so

21 State and local authorities, to DOI or BIA?

22 A. As I indicated earlier, I'm -- I know

23 that the State had asked for assistance, for instance,

24 in alerting them when we would see caravans. I think

25 there was some times where we had stopped traffic on

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1 the reservation side of the highway.

2 So there -- there was some of those

3 instances that I was able to identify in the executive

4 briefings, but those seemed to be just sprinkled

5 throughout and likely were the result of, you know,

6 the -- the sheriff's office calling down, saying,

7 "Hey, can -- can you send an officer out and see if

8 anybody is moving?" or "Can you slow traffic down?

9 We've got an incident happening," something of that

10 nature.

11 Not -- it wouldn't have been, you know,

12 some -- some request that came all the way up, for

13 instance, to the Bureau or Department level.

14 Q. Okay. I want to change -- I'm not on

15 topic 20, but I do want to ask you about, you know,

16 this issue of just, you know, limiting -- well, let me

17 start over.

18 My understanding is on the south side of

19 the Cannonball River there's an overlap of Corps land

20 and Standing Rock Sioux Reservation land. Are you of

21 a -- of a similar understanding?

22 A. I tried to make heads or tails of that

23 in all the documentation and research and testimony,

24 but I -- I presume that's correct, yes.

25 Q. Okay. And so there was -- I believe the

ND OBJ:
Introduces
new material

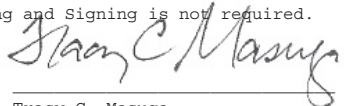
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<p style="text-align: right;">Page 106</p> <p>1 camps are called -- and they're sometimes referred</p> <p>2 differently by different individuals, but there's the</p> <p>3 Sacred Stone Camp. And if that's on reservation land</p> <p>4 as well as Corps-managed land, so there's overlap</p> <p>5 there, did the Corps coordinate with BIA or the</p> <p>6 Department of the Interior about that reservation land</p> <p>7 and the camps that were on reservation land?</p> <p>8 A. I don't believe so.</p> <p>9 MR. JAFEK: I'm going to object. I</p> <p>10 think the question is non- -- vague and ambiguous.</p> <p>11 But you can answer.</p> <p>12 A. I don't believe so. I know throughout</p> <p>13 the duration of the event, determining land statuses</p> <p>14 was something ongoing from the beginning to the end.</p> <p>15 And so it may very likely have been at the conclusion,</p> <p>16 or even after, that it was realized that that may have</p> <p>17 been both reservation and Corps property.</p> <p>18 Q. (BY MR. KERLIN) Okay. And then at one</p> <p>19 point there was -- were you aware that the Corps had</p> <p>20 an -- you know, they indicated that they wanted to</p> <p>21 establish a free-speech zone?</p> <p>22 A. I did see that in the briefing</p> <p>23 materials, yes.</p> <p>24 Q. And so if that free-speech zone was on</p> <p>25 the south side of the Cannonball River, which would be</p>	<p style="text-align: right;">Page 108</p> <p>1 Our -- our focus was providing adequate</p> <p>2 resources, and our primary objection would be that we</p> <p>3 lacked the appropriate resources should a location on</p> <p>4 the reservation be established for a significant</p> <p>5 higher number of people.</p> <p>6 Q. I -- I don't think I have -- well, I</p> <p>7 have one more question.</p> <p>8 Mr. O'Neal, have I been respectful and</p> <p>9 courteous to you throughout the course of this</p> <p>10 deposition today?</p> <p>11 A. Yes, sir.</p> <p>12 MR. KERLIN: With that, the Plaintiff</p> <p>13 State of North Dakota would pass the witness to</p> <p>14 counsel for the United States if they have any</p> <p>15 questions at this time.</p> <p>16 MR. JAFEK: Thank you. If we could just</p> <p>17 take five, maybe ten minutes, I'll confer with</p> <p>18 Mr. O'Neal, and then we'll be -- we'll be back with</p> <p>19 any follow-up questions, if necessary.</p> <p>20 THE VIDEOGRAPHER: Going off the record.</p> <p>21 The time is 6:53 p.m. UTC, 11:53 a.m. Mountain.</p> <p>22 (Recess taken 11:53 a.m. to 12:00 noon</p> <p>23 Mountain Standard Time.)</p> <p>24 THE VIDEOGRAPHER: We are back on the</p> <p>25 record. The time is 7:00 p.m. UTC, 12:00 p.m.</p>
<p style="text-align: right;">Page 107</p> <p>1 an overlap of Corps-managed land and Standing Rock</p> <p>2 Reservation land, any coordination with respect -- you</p> <p>3 know, was the Corps saying, "Hey, BIA, this is what</p> <p>4 we're going to do, and is this going to create any</p> <p>5 issues for you?" Or these are -- "We want to make you</p> <p>6 aware of it," that sort of thing?</p> <p>7 A. No. There -- and more than likely, that</p> <p>8 would not have been something BIA would have been in</p> <p>9 support if -- if it would have been known at that time</p> <p>10 that that was joint property, or if it was -- if it</p> <p>11 is, in fact, joint property.</p> <p>12 Q. And why is that? Why wouldn't BIA be in</p> <p>13 support of that?</p> <p>14 A. From a resource allocation, as I</p> <p>15 indicated earlier, and, you know, our ability to</p> <p>16 respond and provide services, I mean, is extremely</p> <p>17 limited.</p> <p>18 And any -- any time -- you know, even</p> <p>19 in -- as I indicated earlier, when the -- when the</p> <p>20 State was looking to remove people from the Corps of</p> <p>21 Engineers properties, our concern was those people</p> <p>22 being moved onto the reservation where then they would</p> <p>23 become the responsibility of the Bureau of Indian</p> <p>24 Affairs and then any impact to the tribal reservation</p> <p>25 lands.</p>	<p style="text-align: right;">Page 109</p> <p>1 Mountain.</p> <p>2 EXAMINATION</p> <p>3 BY MR. JAFEK:</p> <p>4 Q. Thank you. So I just have a couple</p> <p>5 areas of questions.</p> <p>6 Mr. O'Neal, if you recall earlier, you</p> <p>7 were being asked questions by Mr. Kerlin regarding the</p> <p>8 September 9, 2016, joint statement. And that's</p> <p>9 Exhibit 494, and that's being shown to you now on the</p> <p>10 screen.</p> <p>11 My first area of questions, you were</p> <p>12 asked some questions by Mr. Kerlin asking whether the</p> <p>13 Department of the Interior was bound by this exhibit,</p> <p>14 and he used that term "bound" in a couple of different</p> <p>15 questions.</p> <p>16 In answering those questions, you</p> <p>17 weren't commenting on any legal impact on the</p> <p>18 Department of Interior by joining this statement,</p> <p>19 correct?</p> <p>20 MR. KERLIN: Objection, form.</p> <p>21 A. That's correct.</p> <p>22 Q. (BY MR. JAFEK) Okay. And then also,</p> <p>23 with respect to the statement, you're not fam- --</p> <p>24 well, are you -- are you familiar with whether the</p> <p>25 Department of the Army or the Department of Engineers</p>

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110 to 113

<p style="text-align: right;">Page 110</p> <p>1 had any input or what that input was into this 2 statement?</p> <p>3 A. I am not aware of any input they may 4 have had.</p> <p>5 MR. JAFEK: I don't have any further 6 questions.</p> <p>7 MR. KERLIN: Okay. Nothing further on 8 behalf of the State.</p> <p>9 MR. JAFEK: Okay. And I would just like 10 to briefly thank you, Paul, for getting this done in 11 time for Mr. -- for Jason to get on to his -- his 12 meeting.</p> <p>13 THE VIDEOGRAPHER: Okay. This concludes 14 today's deposition of Jason O'Neal. The time is 15 7:01 p.m. UTC, 12:01 p.m. Mountain. We are off the 16 record.</p> <p>17 (At 12:01 p.m. Mountain Standard Time 18 the proceedings were not being videotaped.)</p> <p>19 MR. KERLIN: Perfect. And for the court 20 reporter, read and sign -- I'm sure that's what you 21 want -- Mr. Jafek?</p> <p>22 MR. JAFEK: Correct.</p> <p>23 MR. KERLIN: Perfect. Okay. Thanks 24 again, Mr. O'Neal. Thanks for your time.</p> <p>25 MR. JAFEK: Yes, thank you.</p>	<p style="text-align: right;">Page 112</p> <p>1 I, JASON N. O'NEAL, do hereby certify 2 that I have read the above and foregoing deposition 3 and that the same is a true and accurate transcription 4 of my testimony, except for attached amendments, if 5 any.</p> <p>6 Amendments attached () Yes () No</p> <p>7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">_____ JASON N. O'NEAL</p> <p style="text-align: center;">The signature above of JASON N. O'NEAL was subscribed and sworn or affirmed to before me in the county of _____, state of _____, this _____ day of _____, 2022.</p> <p style="text-align: center;">_____ Notary Public My Commission expires:</p> <p style="text-align: center;">State of North Dakota 12/6/22 (tcm)</p>
<p style="text-align: right;">Page 111</p> <p>1 (Discussion off the record.)</p> <p>2 THE REPORTER: Is there any hurry on the 3 turnaround of the final?</p> <p>4 MR. JAFEK: Not from our side.</p> <p>5 MR. KERLIN: Yeah, not from plaintiff.</p> <p>6 WHEREUPON, the within proceedings were 7 concluded at the approximate hour of 12:02 p.m. 8 Mountain Standard Time on the 6th day of December, 9 2022.</p> <p>10 * * * * *</p> <p>11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 113</p> <p>1 REPORTER'S CERTIFICATE 2 STATE OF COLORADO) 3) ss. 4 CITY AND COUNTY OF DENVER)</p> <p>5 I, TRACY C. MASUGA, Registered 6 Professional Reporter and Certified Realtime Reporter, 7 do hereby certify that previous to the commencement of 8 the examination, the said JASON N. O'NEAL was duly 9 sworn or affirmed by me to testify to the truth in 10 relation to the matters in controversy between the 11 parties hereto; that the said deposition was taken in 12 machine shorthand by me at the time and place 13 aforesaid and was thereafter reduced to typewritten 14 form; that the foregoing is a true transcript of the 15 questions asked, testimony given, and proceedings had.</p> <p>16 I further certify that I am not employed 17 by, related to, nor of counsel for any of the parties 18 herein, nor otherwise interested in the outcome of 19 this litigation.</p> <p>20 IN WITNESS WHEREOF, I have affixed my 21 signature this 12th day of December, 2022.</p> <p>22 23 24 25</p> <p>____X____ Reading and Signing was requested. ____ Reading and Signing was waived. ____ Reading and Signing is not required.</p> <p style="text-align: center;"> _____ Tracy C. Masuga Registered Professional Reporter Certified Realtime Reporter</p>

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<p>1 Errata Sheet</p> <p>2</p> <p>3 NAME OF CASE: Plaintiff vs UNITED STATES</p> <p>4 DATE OF DEPOSITION: 12/06/2022</p> <p>5 NAME OF WITNESS: Jason O'Neal</p> <p>6 Reason Codes:</p> <p>7 1. To clarify the record.</p> <p>8 2. To conform to the facts.</p> <p>9 3. To correct transcription errors.</p> <p>10 Page _____ Line _____ Reason _____</p> <p>11 From _____ to _____</p> <p>12 Page _____ Line _____ Reason _____</p> <p>13 From _____ to _____</p> <p>14 Page _____ Line _____ Reason _____</p> <p>15 From _____ to _____</p> <p>16 Page _____ Line _____ Reason _____</p> <p>17 From _____ to _____</p> <p>18 Page _____ Line _____ Reason _____</p> <p>19 From _____ to _____</p> <p>20 Page _____ Line _____ Reason _____</p> <p>21 From _____ to _____</p> <p>22 Page _____ Line _____ Reason _____</p> <p>23 From _____ to _____</p> <p>24</p> <p>25 _____</p>	Page 114